

168-606 No 35
Record No. **1745**

1087

In the
Supreme Court of Appeals of Virginia
at Richmond

CITY OF NORFOLK, Plaintiff in Error,

v.

**BOARD OF SUPERVISORS OF NANSEMOND
COUNTY, Defendant in Error.**

FROM THE CIRCUIT COURT OF THE COUNTY OF NANSEMOND

"The briefs shall be printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records along with which they are to be bound, in accordance with Act of Assembly, approved March 1, 1903; and the clerks of this court are directed not to receive or file a brief not conforming in all respects to the aforementioned requirements."

The foregoing is printed in small pica type for the information of counsel.

M. B WATTS, Clerk.

168 Va 606

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 1745

CITY OF NORFOLK, Plaintiff-in-error,

versus

BOARD OF SUPERVISORS OF NANSEMOND COUNTY,
Defendant-in-error.

PETITION FOR WRIT OF ERROR.

*To the Honorable Chief Justice and Justices of the Supreme
Court of Appeals of Virginia:*

Your petitioner, the City of Norfolk, a municipal corporation (hereinafter referred to as the City), respectfully represents that it is aggrieved by a final judgment of the Circuit Court of Nansemond County entered in the above styled cause on the 8th day of November, 1935. A copy of the record in said cause is presented herewith as a part of this petition.

STATEMENT OF THE CASE.

In 1931 the Commissioner of the Revenue of the County of Nansemond (hereinafter referred to as the County) assessed for taxation certain property of the City located in that County and constituting a part of the water works of the City. The original water plant of the City was established in 1872 in Princess Anne County and has, from time to time, been enlarged as the necessities of the City required. In 1919 the inadequacy of the water plant was so great that the inhabit-

ants of the City were threatened with a water famine, which was narrowly but providentially averted. This led to the establishment in 1922 of an addition to the water system in Nansemond County. Lands and water rights in that County were acquired by the City, dams for impounding the water were constructed and pipes laid connecting this additional water supply with the water works in the City (Ev., pp. 137, 140).

That said plant was acquired, established and maintained for the sole purpose of a sufficient water supply for Norfolk City and its inhabitants. Out of its surplus supply of water the City has furnished a small quantity to residents in its suburbs as incidental to its main purpose. Approximately 94% of its entire output is furnished to inhabitants of the City and the residue of only approximately 6% is scattered through suburban communities and furnished at cost of production and distribution. The City has never made any revenue from its water plant, it being the purpose and policy of the City to operate the plant and to charge such rates for water as will pay its cost without either charge or profit to the City (Ev., pp. 136, 149).

This property, as well as the other parts of the City water works, situate in Princess Anne, Norfolk and Isle of Wight Counties, had, for the many previous years of its existence, been regarded as exempt from taxation under Section 183 of the Virginia Constitution, except that in 1928 a certain parcel of this property was attempted to be assessed for taxation by Nansemond County, but this Court held that it was exempt (see *Norfolk v. Board of Supervisors*, 153 Va. 789.) In 1931 the Commissioner of the Revenue not only assessed the property for that year, but for the three preceding years of 1928, 1929 and 1930.

Application was promptly made by the City to the Circuit Court of Nansemond County for a correction of the assessments thus made for the several years, on the ground that said properties were exempt from taxation under the Constitution of Virginia. The Circuit Court, after making certain corrections required by Statute in the amount of the assessment, denied the exemption and it is to the judgment of the Circuit Court sustaining the taxability of that part of the water works of the City located in the County, that this writ of error is sought, to the end that the erroneous assessment may be corrected.

The further facts and pertinent evidence with regard thereto will be referred to in discussing the questions arising in this case.

ASSIGNMENT OF ERROR.

The action of the Court in holding that the property was assessable for taxes is assigned as error.

ARGUMENT.

Assessment for 1928 controlled by Constitution before its revision in 1928.

The exemption of City property is provided in Section 183 of the Constitution. This section was revised in 1928, but the revision did not become effective until after the assessing period of 1928, so that the validity of the assessment for 1928 involves the application of the Constitution of 1902 before its revision, while the validity of the assessments for the subsequent years depend upon the Constitution as revised. (Constitution of 1928.)

We desire to emphasize this, for the reason that the Circuit Court apparently overlooked that the assessment for 1928 was controlled by the former and not the revised section of the Constitution, and held the property assessable in 1928 because in the Court's conclusion the water works property of the City was a source of revenue or profit, which was not at all the test of taxability under the Constitution of 1902, but which is the test of taxability under the revision of 1928.

Since, therefore, the taxability of this property for the year 1928 is to be determined by the Constitution, as it was before the revision, it will be proper and, in fact necessary to consider the assessment for 1928 separate and apart from the assessments in subsequent years.

THE EXEMPTION UNDER THE CONSTITUTION OF
1902.

Pertinent provisions of Section 183 of the Constitution of 1902 are as follows:

“Section 183. Property Exempt from Taxation.—Except as otherwise provided in this Constitution, the following property and no other, shall be exempt from taxation, State and local, but the General Assembly may hereafter tax any of the property hereby exempted save that mentioned in Subsection (a):

“(a) Property directly or indirectly owned by the State,

however held, and property lawfully owned and held by counties, cities, towns, or school districts, used wholly and exclusively for county, city, town or public school purposes,
 * * * ,

“(b) * * *

“(c) * * *

“(d) * * *

“(e) * * *

“(f) * * *

“(g) * * *

“* * * and whenever any building of land, or a part thereof, mentioned in this section and not belonging to the State shall be leased, or shall be a source of revenue or profit, all of such buildings and land shall be liable to taxation as other land and buildings in the same county, city, or town.
 * * * ,

This Court has been called upon several times to construe the meaning of the words “used wholly and exclusively” as intended by this section, and has given it a fixed and definite meaning. In all the cases it was uniformly held that where the dominant use of City property was for its own public purposes and only a small quantity of water was furnished consumers outside of the City limits as incidental to its main purpose of furnishing to its own inhabitants, that the property was exempt from taxation. It was further held that the “revenue or profit clause” was not an additional qualification of the exemption of City property.

The conclusive inquiry, therefore is, was the water works property in 1928 used wholly and exclusively for City purposes according to the meaning and intent of those words as used in the Constitution?

Happily, there is not a word of conflict in the evidence as to the purpose and use of the City’s water works. We do not suppose it will be denied, or even questioned that every part and parcel of the Norfolk City water works was acquired and constructed for the sole purpose and intent of providing a sufficient water supply for the City and its inhabitants; that its dominant purpose and use during all of the years of its existence, including the year for which assessment is now sought to be made, has been the supplying of water for the purposes of the City and its inhabitants, and that the small quantity of water furnished outside of the City has been incidental and out of its surplus supply. We say that this will

not be questioned because it was an expressed concessum in the trial court.

But whether conceded or not, it is abundantly shown in the evidence, not only that its dominant purpose was the supplying of water to its own inhabitants, and that only a very small quantity of water was furnished to scattered consumers in the suburban territory, but it is further definitely shown that such small quantities of water incidentally furnished to outsiders is furnished at practical cost of production and distribution, and that it is the fixed policy of the City to furnish water to its own consumers and the scattered persons outside, at the cost of production and distribution and without pecuniary profit.

Honorable W. R. L. Taylor, Mayor of the City and President of the City Council, testified as to the purposes and policies of the City in the operation of its water system. He emphasized in detail what he summed up in the following statement:

"The construction and operation of the water works has been entirely for the purpose of furnishing a necessary and vital public facility, and without its operation being a charge upon the City revenues, and at the same time, without the reflection of a profit in its operation." (Ev., p. 136.)

And further:

"If we assume we were making money on the water end of the City's operations, the rates would be immediately cut in order to pass that back to the citizens who take water. It is not operated for that purpose. If there is any profit at all made it is simply incidental." (Ev., p. 139.)

The testimony of Walter H. Taylor, III, Director of Public Works of the City, who has been associated with the Water Department for forty-two years, shows the development and use of the water works from its beginning to the present time. In detail he points out how every addition was supplied to overcome inadequacy and to meet the growing needs of the City. In stating the purpose and use of the Lake Prince addition, which is the property in question, he says:

"In 1919 the City of Norfolk had a near calamity of being wholly without water. We were prepared to pump salt-water into the mains for sanitation and fire purposes. Arrangements had been made for furnishing people with drinking water through tank cars and wagons, the water to be brought

from Portsmouth. A providential rain came ten or fifteen days later before that eventuality.

"That calamity led to the development of Lake Prince, which lies by this map about two miles from here. From Lake Prince we have a long line of thirty and thirty-six inch conduit of water mains of wood, concrete and iron, that brings water of Lake Prince into the City of Norfolk about the 37th Street Pumping Plant." (Ev., p. 160.)

In 1928 94% of the entire output of the water system was furnished to inhabitants within the City limits and only about 6% was furnished outside of the City limits, and this comparatively insignificant amount is scattered in the suburban contiguous territory of Norfolk County and South Norfolk, so physically connected with the City that the evidence is that "you can't tell when you pass by one into the other" (Ev., p. 157); and in Virginia Beach, a nearby seaside resort, in which probably a majority of the property owners are either residents or have their business in Norfolk City. The aggregate of all of the water supply of those communities outside of the limits of Norfolk City is not only about 6% of the output, but it is supplied out of surplus water to accommodate a suburban necessity, with no idea of pecuniary gain or profit. The uncontradicted evidence in this regard is that the water is furnished at the cost of production and delivery (Ev., pp. 146-153). The rate in Norfolk County and in South Norfolk is 10% higher than in Norfolk City, but Mr. Taylor, who is in charge of the Water Department, explains with clearness, that this differential is covered by the additional cost of service. After saying so directly, he further testifies as follows:

"I have never advocated the making of money in the Water Department of the City of Norfolk from any class of citizens, either within or without the City. It is a service that, in my opinion, should be rendered at cost. It is my opinion that it is the most governmental of all activities of the government of the City of Norfolk and should be rendered at cost, and that has been my aim in arriving at every charge for service to the public for the installation or supplies or capital outlay account on water consumed, whether within or without the City of Norfolk." (Ev., p. 149.)

In regard to the very small quantity of water furnished Virginia Beach, the undisputed evidence is that it is furnished at a cheaper rate than that furnished the inhabitants of the City and at a loss to the City of Norfolk. In speak-

ing of the agreement of the City of Norfolk to furnish Virginia Beach water out of its surplus water supply at less than cost, Mr. Taylor testified:

“It was a courtesy of one sub-division of the State serving another. It has not been a profit to the City of Norfolk, and from the time it began to the present time, as compared with all other services we render, is at less cost.”

It will be particularly noted that in the contract of the City for this incidental outside service the agreement is to supply water from surplus supply only, with the expressly reserved right to discontinue same if the needs of the City require it.

Thus it will be seen that the water works of the City, a part of which is sought to be taxed, has been used for its own public purpose and there has been no other substantial use of it for private profit; that the small quantity of water furnished to persons outside of the City limits has been incidental, out of its surplus supply, and without profit. In other words, the operations of its water works have been governmental uses and not for commercial purposes.

When such is the case, this Court has repeatedly and consistently declared that such use is “wholly and exclusively” for City purposes in the meaning of the Constitution as it was prior to the revision of 1928.

In the many cases decided by this Court it was held, without exception, that an incidental outside use, even though productive of revenue, did not defeat the exemption.

In *Commonwealth v. Hampton Institute*, 106 Va. 614, the Hampton Normal and Agricultural Institute owned the Hemenway Farm, which was being used as a model dairy farm. They produced milk and butter and, after supplying the needs of the Institution, sold the surplus outside, from which source a revenue of more than \$9,000.00 a year was received. It was contended that as the property was a source of revenue and profit it was taxable under Section 183 of the Constitution.

Keith, P., said:

“But when we consider that the Institute could lawfully establish a model farm for the purpose of scientific instruction in the dairy business; that it is used for purpose of instruction; that a large, if not greater, part of the produce of the farm is consumed within the Institute; that the revenue derived from the marketing of the surplus, the whole of which

goes into the treasury of the school for its support, is a mere incident and not the object in view; that it would be difficult, if not impossible, to determine with exactness the ratio between that which would be taxable as constituting a source of revenue, and that which would be exempt, as being wholly devoted to educational purposes; and having regard to the rule governing the construction of tax laws that the taxing power must clearly and precisely ascertain and fix the subject of taxation and the amount of the burden imposed, and that all doubts in respect thereto are solved in favor of the citizen, we have reached the conclusion that the 'Hemenway' Farm is not, under existing law, a proper subject for taxation."

In *Commonwealth v. Lynchburg Y. M. C. A.*, 115 Va. 745, the third and fourth stories of the property were rented to roomers and a revenue of about \$5,000.00 per annum was realized therefrom, the whole building being valued at \$48,000.00. It was insisted, that the rented rooms being a source of revenue or profit, the building was liable for taxes.

Judge Buchanan said:

"If the dominant purpose in the use made of these rooms is to obtain revenue or profit, although it is to be applied to the general objects of the association, it would render the property liable to taxation. But if the use made of these rooms has direct reference to the purposes for which the association was incorporated, and tends immediately and directly to promote those purposes, then its use is within the provisions exempting the property from taxation, although revenue or profit is derived therefrom as incident to such use."

A case, similar in fact and identical in principle with the instant case, is that of *Commonwealth v. Richmond*, 116 Va. 69. In that case the City of Richmond furnished a small quantity of water to the Town of Barton Heights, to several industrial plants outside of the City limits, and also to residents outside of the City limits. In this case the City of Norfolk furnished a small quantity of water out of its surplus supply to South Norfolk, Virginia Beach and other residents outside of the City limits. In both the purpose and dominant use of the plant was to furnish water to the inhabitants of the City, and in both the supply outside was small in comparison with the total output. The only difference which we are able to perceive between the two cases, in actual fact,

is that in Richmond approximately 98% of the water was consumed inside while in Norfolk approximately 94% is consumed inside of the City limits. It is inconceivable that such insignificant difference should make the one "wholly and exclusively" a City purpose and the other not. Certainly such slight difference is not sufficient to change the character of dominant use and purpose.

This Court held in that case, apart from the fact that the small amount of water furnished outside was *de minimis*, that the incidental outside use did not affect its character as being wholly and exclusively used for municipal purposes.

Says the Court, speaking through Cardwell, J.:

"The exemptions from taxation provided for by Section 183 of the Constitution of property lawfully owned and held by a City wholly and exclusively used for city, county, town, charitable, educational, or religious purposes, are not defeated or annulled by the mere fact that revenue or profit, over and above the cost of maintenance, is realized from the property. If the use made of the property so held has direct reference to the purposes for which it is by law authorized to be owned and held, and tends immediately and directly to promote those purposes, then its use is within the provisions exempting the property from taxation, although revenue or profit is derived therefrom as incident to such use."

And further:

"The principle sustained by the 'weight of authority', as well as elementary writers, is that all property lawfully owned and held by cities and towns for governmental purposes, *though a source of revenue or profit*, which was paid into the City treasury and used for municipal purposes by the City, the dominant purpose in the use having direct reference to the purposes for which the property is authorized by law to be owned and held, and tends immediately and directly to promote those purposes, is exempt from taxation." (Italics supplied.)

And further, quoting from Prof. Pond of Columbia University, in his work on Public Utilities, Sections 322 and 323:

"Nor should the fact that revenue may be derived from the operation of such plants by the City change the princi-

ple of their exemption from taxation, for in no sense can that fact alter the nature of the use to which such property is put, nor the purpose accomplished by such use. And this is the test of its being a proper subject of support by taxation and of exemption from taxation. That revenue may be realized from such plants, tending to make them self-supporting, is no reason for subjecting them to the payment by taxation for their own support and that of the government to which they belong. This incidental matter of revenue does not change the nature of the use or purpose of such property from a public one and for municipal purposes generally, to one that is wholly private and that is conducted for the sole purpose of pecuniary profit rather than for the general welfare, and so liable to taxation."

In *Supervisors of Nansemond County v. Norfolk*, 153 Va. 768, in which a part of the very property now under consideration was attempted to be assessed by Nansemond County on the alleged theory that it was a source of revenue or profit, this Court, speaking through Mr. Justice Holt, in declaring that the property of the City was exempt from taxation, said:

"So long as the dominant purposes for which the lands were purchased are maintained, incidental uses which serve in some small degree to lessen the city's burdens, although foreign to, but not in derogation thereof, and which do not change the character of the holding, are not sufficient to bring them within the exception noted in the Constitution, and to make them a subject of taxation."

At the very same term of this Court, in *Warwick County v. Newport News*, 153 Va. 789, Chief Justice Prentiss, after referring to the case of *Commonwealth v. City of Richmond*, 116 Va. 69, in which the property of that City was held exempt from taxes notwithstanding it sold a small percentage of water to outside consumers, in distinguishing that case from that case from the Newport News case, then under consideration said:

"It is undoubtedly true that a City may supply limited quantities of water to persons outside of the city as a mere incident to the enterprise as a whole, and certainly when the total amount is as small as that shown in the *Richmond City case* it may be treated as inconsequential, and the property will nevertheless be exempt from taxation as devoted wholly to municipal purposes. We do not intend, by anything appearing in this opinion, to impinge in the slightest degree

upon that reasonable construction of the section (183). Cities and towns owning a water supply acquired for the public purposes of such cities may thus dispose of such surplus production. *Mount Jackson v. Nelson*, 151 Va. 407, 145 S. E. 355. It is not only permissible but proper so to do, so long as this does not prevent the full discharge of its duties to its own citizens, and this alone will not defeat the exemption."

In the *Newport News* case, *supra*, the water works of the City of Newport News was held not to be exempt from taxation, because the supplying of water to outside communities was not incidental to any dominant purpose to supply its own inhabitants, but it was one of the primary purposes and obligations of the City in acquiring the plant.

As said by Chief Justice Prentis in the *Newport News* case:

"The duty to supply the consumers outside of the City, so far from being incidental or subsidiary to any dominant use by the City by its own citizens, is by the Act made one of the main and primary duties of the City equally imperative and binding."

It was because of this distinction between that case and the *Richmond* case, and also the cases preceding, that the tax was sustained. The same distinction exists between the *Newport News* case and the instant case, as exists between the *Newport News* case and the *Richmond* case.

The foregoing cases, we insist, are decisive of this case, so far as the assessment for 1928 is concerned, and require a reversal of the judgment of the Circuit Court of Nansemond County in that respect.

ASSESSMENTS FOR 1929, 1930, 1931 AND 1932.

The assessments for 1929, 1930, 1931 and 1932 invoke the application of the Constitution as revised in 1928. We have already pointed out, in discussing the assessment for 1928, that Subsection (a) of Section 183 of the Constitution, before its revision, exempted from taxation the property of cities only when "used wholly and exclusively" for City purposes. This was the only qualification upon its complete exemption at that time. The subsequent clause "whenever any building or land, or part thereof, mentioned in this section and not belonging to the State shall be leased or shall be a source of revenue or profit, all of such buildings and land shall be liable to taxation as other lands and buildings in the same county, city or town", which was in the section

before the revision exactly as it is in the section since the revision, was held not to further qualify the exemption. We assume that the function and intention of that clause, before revision, was to furnish the *measure* of the assessment in case the property was not used wholly and exclusively for City purposes—that is, when part was so used and part not so used—by providing, that in such case, *all* of it and not *the part only* which was used for other than City purposes, should be taxed. In the revision, what was then regarded as the only restriction upon the exemption was stricken out. The effect of the revision was considered by this Court in the second Newport News case, *Newport News v. Warwick County*, 159 Va. 571. It was there held that the revision was not intended to change the policy of the State.

The Court, speaking through Justice Chinn, after stating and approving the construction which this Court had placed upon the section before revision, said:

“In view of this construction it seems quite evident that the framers of the revised Constitution did not omit the qualifying language from Sub-section (a) with the intention of changing the policy of the State, as claimed by counsel, but for the reason that, as construed, this language was practically of the same import and effect as the subsequent ‘source of revenue or profit’ provision in Section 183 and was therefore, to some extent at least, superfluous; the only substantial difference being, that whereas the qualifying provision in Sub-section (a) applies to all property owned by counties, cities, towns and school districts, the subsequent provision applies only to buildings and land belonging to those political subdivisions of the State.”

This is the last expression of the Court upon the subject and, in view of the statement by the Court that no change in the policy of taxation was intended by the revision, we perhaps might rest our case upon what we have already said. If the property was exempt from taxation before the revision, then, under the same conditions of fact, it must be exempt under the revised Constitution, unless the revision changed the policy of taxation. This is self-evident. It could hardly be a proper construction to say that by removing a restriction, the only restriction upon exemption, that the exemption had thereby become more restricted.

However, we will meet fully the test laid down by this Court in *Newport News v. Warwick County*, 159 Va. 571, which test is stated as follows by Justice Chinn:

“In other words, in order to determine whether any building or land in the instant case is taxable under this provision it must be ascertained whether there has been a revenue (meaning net revenue) or profit derived from the total revenues of the entire water works property of which said building or land is a part.”

This Court further held in that case that the question of revenue or profit must be determined as of the preceding year, that is to say, the assessment for 1929 depends upon whether there was revenue or profit in 1928 and so on.

While the figures slightly vary in the four years in question, the variance is not sufficient to change the result in determining whether there was revenue or profit. It will, therefore, be necessary only to present the figures as to one of the years. We will consider the financial operations for the year 1929, which are not materially different in their general result from the other years.

WAS THE WATER PLANT A SOURCE OF PROFIT TO THE CITY IN 1929.

We assert that the City has never received as much as a cent from its water works, over and above the expenditures on account thereof, during any year of the entire period. On the contrary, every cent received during that period, from its water operations has been spent on account thereof and, in fact, a deficit has resulted in each of the years. The Circuit Court arrived at a profit by refusing any allowance, in any form, for proved depreciation and added an estimated amount for the potential (not actual) use of its water system for fire protection when no charge had been made therefor and not a penny received on account thereof.

There is no dispute as to the amount which has been received by the City from its water operations, nor as to its expenditures therefor. The gross receipts by the City for the year 1929 were \$859,053.06 (see court order, R., p. 450). The disbursements for that year were as follows: (See financial statement “Exhibit B”, page 15)

Ordinary operating expenses:	\$247,107.08
Interest on bonded debt:	469,003.84
Sinking Fund Annuity:	167,379.10
Total	<hr/> \$883,490.02

It, therefore, definitely appears that the City actually paid out \$24,436.96 on account of its water works more than it received therefrom. Instead, therefore, of its having been a source of net revenue or profit, the water works resulted in 1929 in a net loss to the City of \$24,436.96.

The correctness of these figures is nowhere disputed or questioned. They are testified to as being correct by the auditors of both the County and the City (see Evidence of A. P. Breeden, City Auditor of Norfolk City, on pages 28 and 29 of the Record); W. P. Hilton, Certified Public Accountant and witness for the City (page 85 of Record); H. C. January, Certified Public Accountant and witness for the County (pages 255 and 256 of Record), and W. P. Jordan, Certified Public Accountant and witness for the County (page 343 of Record). The latter witness reported a discrepancy of \$19.00.

Notwithstanding the conceded correctness of these figures, the Judge of Nansemond County concluded that the water operations were a source of revenue and profit to the City in 1929, as in the other years involved. In his opinion (found on page 443 of the Record), is stated the reason adopted by him in reaching that conclusion. He recognizes that there is no disagreement between the auditors of the City and those of the County as to the gross receipts from water operations and the expenditures on account thereof, and that the difference in results "lie chiefly in the different treatment of the controverted items of depreciation and of the costs of water and equipment for fire protection". He correctly concludes that the question of profit or loss depends upon: (1) Whether any allowance should be made in some form on account of depreciation; and (2) whether the City should charge itself for the potential use of the water system for fire protection. And he erroneously concluded, we deferentially submit, that no depreciation in any form should be considered and that the City should be charged a theoretical sum for fire protection which he estimated at \$148,000.00 annually.

These two items, therefore, constitute the only two points of controversy in the case. We accept the issue thus clearly and closely drawn and are willing to concede that if the Circuit Court was correct in holding, that the City was not entitled to a deduction for depreciation in any form, and was also correct in holding, that the City must account to itself for the potential use of its water equipment for fire hazards, then the water utilities were a source of profit. On the other hand, it must be conceded that if, in determining the question of profit the City is entitled to a proper deduction for

actual depreciation and that it did not receive any profit, as contemplated by law, from the protection it furnished its inhabitants against fire hazards, without charge, then the water utilities were not a source of revenue or profit.

We will, therefore, consider these two determinative controversial questions.

SHOULD PROVED DEPRECIATION BE DEDUCTED IN DETERMINING PROFIT.

It is self-evident that the question of profit from the operation of any plant cannot be correctly determined without taking account of depreciation in some form where depreciation really exists. There can be no profit to the owner if the value of his property, by its use, has decreased in value to the extent of its net income derived from its use. The financial condition is the same. What has been gained in income has been lost in value.

In *Knoxville v. Knoxville Water Company*, 212 U. S. 1, the Supreme Court of the United States, speaking through Mr. Justice Moody, said:

“A water plant, with all its additions, begins to depreciate in value from the moment of its use. Before coming to the question of profit at all the company is entitled to earn a sufficient sum annually to provide not only for current repairs but for making good the depreciation and replacing the parts of the property when they come to the end of their life. The company is not bound to see its property gradually waste, without making provision out of earnings for its replacement. It is entitled to see that from earnings the value of the property invested is kept unimpaired so that, at the end of any given term of years, the original investment remains as it was at the beginning.”

And further:

“The items composing the plant depreciate in value from year to year in a varying degree. Some pieces of property, like real estate for instance, depreciate not at all, and sometimes, on the other hand, appreciate in value. But the reservoirs, the mains, the service pipes, structures upon real estate, standpipes, pumps, boilers, meters, tools and appliances of every kind begin to depreciate with more or less rapidity from the moment of their first use. It is not easy to fix at any given time the amount of depreciation of a plant whose component parts are of different ages, with different expecta-

tions of life. But it is clear that some substantial allowance for depreciation ought to have been made in this case."

In refusing to make any allowance for depreciation in any form in this case the Circuit Court obviously misconstrued or misinterpreted the language used in *Newport News v. Warwick County*, 159 Va. 571.

It appears in the evidence in this case that minor repairs were included in the operating expenses, but as the evidence will show, these repairs were of a minor nature and in no sense covered depreciation. They were referred to by witnesses as "current maintenance" but were shown to be such as repairing leaks, etc., and did not include replacements or deterioration in pipe lines or wear and tear of machinery or, in fact, anything which constitutes depreciation.

The Court declared in its opinion that these repairs were *de minimis*, while the evidence showed that the depreciation which was described by the witnesses as something over and above current maintenance and repairs amounted to as much as \$210,000.00 per year. The reason assigned by the Court for refusing any allowance for depreciation is found on page 444 of the Record, as follows:

"In the Newport News case the Court said with reference to the first controverted item: 'We do not think the City should be permitted to charge off an estimated amount on account of depreciation, and at the same time be allowed the cost of maintenance and replacements.' And that finding of the Court impels me to say that the item carried in the City's Bill of particulars as 'Sinking Fund Annuity' must be considered (subject to inconsequential deductions) as profit."

It appears, therefore, that because small items of current repairs were charged in the operating expense the Court refused to allow a deduction for actual depreciation.

What the Supreme Court of Appeals undoubtedly meant and decided in the Newport News case was, that where an allowance had been made for maintenance and replacements, which covered depreciation or remedied depreciation, then no estimated depreciation should be allowed. This is sound, for to allow an estimated amount for depreciation when an allowance had already been made for the maintenance which had taken care of the depreciation, would be making an allowance twice for the same thing. There is, therefore, good reason for holding that where depreciation has been corrected or arrested by replacements, for which an allowance has been made, a general estimated depreciation should not be allowed.

But there can be no reason to hold that proved depreciation, over and above current maintenance and repairs of minor nature, should not be considered and allowed in determining profits, simply because items of current repairs which did not cover or reduce depreciation were already included in operating expenses. A leak may occur in a pipe line or a broken bolt may be replaced in a piece of machinery, but the repairing of the leak or the replacing of the bolt does not cover the depreciation of the pipe line or the machinery. Surely, even the replacement of a machine would not cover the depreciation in an extensive and complex water system. And yet the Circuit Court held that if any item of repairs or maintenance was charged to operating expenses, however small, then no allowance could be made for depreciation, however great the depreciation.

In the instant case there has been no allowance in any form for any kind of maintenance or replacements which touch depreciation, nor has there been any allowance in any form for any depreciation of any character. This is shown by the evidence of the witnesses for both City and County.

Mr. Walter H. Taylor, III, Director of Public Works of the City, testified:

"The depreciation that Mr. Sebrell has asked me about is that which ordinary maintenance, operation of plant, with the exercise of intelligence and care, cannot put back into the plant. It is lost by wear and rust which ordinary maintenance will not offset." etc. (Ev., p. 161).

And, on page 194:

"By Mr. Godwin:

"Q. Norfolk, by reason of having grown, is constantly requiring capital outlay to increase water mains and things of that sort, is it not?

"A. Yes.

"Q. Out of your capital fund you extend lines?

"A. Yes.

"Q. And in your ordinary expenses, that goes to the maintenance and upkeep of your plants and property; that is right, is it not?

"A. Yes."

On pages 206-7:

"Q. (Mr. Godwin) Mr. Taylor, let me understand. You do not spend any capital funds for general operations?

"A. We do not.

"Q. That is right, isn't it?

"A. Yes.

"Q. You are not permitted to spend bond issue funds for general operations, are you?

"A. We do not.

"Q. After you build a line, you maintain it and keep it up out of your operating expenses?

"A. So far as is possible to do so.

"Q. But in building the line, you build it out of capital funds?

"A. That is correct.

"By Mr. Sebrell:

"Q. If any substantial replacements are put in that line, they are also charged to capital account?

"A. That is correct.

"Q. And the maintenance you are talking about are the current repairs to keep it in operation?

"A. That is correct.

"Q. Is any of the depreciation you spoke of covered by the repairs you put in?

"A. Depreciation is that which cannot be covered by current repairs.

"Q. The depreciation which you have stated to the Court was \$210,000.00 a year was over and above—

"A. (Interposing) It is what we can keep the plant in condition for operation.

"Q. (Continuing)—over and above what you spent for the current repairs and upkeep?

"A. That is right."

On pages 212, 213 and 214:

"By Mr. Godwin:

"Q. Mr. Taylor, let me ask you this question: You take out of your operating expenses such funds as are necessary to maintain your machinery in these buildings, don't you?

"A. To maintain them in working order, putting into them that which ordinary maintenance can put, and over and above that there is a certain wear and tear and deterioration that ordinary maintenance cannot put back into them.

"Q. Suppose, for instance, one of your pumps breaks down; that is taken out of your operating expense, isn't it?

"A. An ordinary break, but if it goes all to pieces and it can be no longer useful, and it has to be replaced, it comes out of capital.

"Q. Have you had any of these replacements out of capital?

"A. Yes.

"Q. If you have a break in a water main and have to go there and put a new piece of pipe in it, do you charge it to capital or operating?

"A. An average break is charged to ordinary maintenance. If it is such a break as involves a new line, it would be charged to capital outlay.

"Q. You mean if you have to put in a whole new line of pipe it would be charged to capital?

"A. If you have to make an expensive substitution because of deterioration or a break in the line, it would be charged to capital outlay.

"Q. How about hydrants and meters? They are taken out of your regular operating expenses?

"A. The installation of hydrants is entirely out of capital outlay.

"Q. That is when they were installed?

"A. When they were installed. If a hydrant becomes obsolete because of the size of the new pump engine, as many of them have in the City of Norfolk, the old ones are junked or left for other purposes than fire hydrants and other hydrants are installed.

"Q. All hydrants come out of capital outlay?

"A. Every hydrant I have ever installed.

"Mr. Godwin: I want the audits for 1919, 1920, 1921 and 1922. In other words, I want his audits for the time Lake Prince and this pipe line were constructed."

W. P. Hilton testifies, on page 129:

"By Mr. Sebrell:

"Q. Now, Mr. Hilton, in order that we may make clear just what you mean by these repairs, do you refer, when you say repairs or replacement, to anything which goes into the capital or book value of the plant?

"A. No.

"Q. Are you referring just to current repairs?

"A. Current ordinary repairs.

"Q. Do you mean anything when you use the word maintenance, which Mr. Godwin wanted you to use—by 'maintenance' do you mean you have made any replacement of any substantial part of the plant, or just the maintenance in operation and upkeep?

"A. Maintenance in operation.

"Q. Does any of your expense account include any replacement in the material part of the plant?

"A. No.

"Q. Does any of it cover any deterioration in this plant?

"A. No.

"Q. So when you say replacement and repairs, you mean those current in the plant for that particular year?

"A. Yes, repairs of a minor nature."

W. P. Jordan, auditor and witness for the County, gives an itemized statement of the repairs and also of replacements during the entire period, from 1927 to and including 1932, and he states that the repairs were included in the operating expenses, but were of a minor nature; that replacements were in every instance charged to capital account, which was not included in the operating expenses (Ev., pp. 328-9).

He further testifies, on page 333:

"By Mr. Godwin:

"Q. Now, Mr. Jordan, what are the kinds of replacements that have been charged to the operating fund?

"A. If there is a small break and it is repaired, it is charged to expense. If they have to renew the line, it is capitalized.

"Q. You mean when they have to renew a long line or a long link?

"A. Anything of a minor nature is charged to repairs; anything of an important nature, such as replacement, is charged to capital account and paid for out of bond funds.

"Q. Then replacements of minor nature, as well as repairs go to operation; is that right?

"A. Yes, if of minor nature.

"Q. And substantially a large replacement has gone to capital account?

"A. That is right.

"Q. Then, replacements are charged to both of them?

"Mr. Sebrell: If your Honor please—

"The Court: Mr. Taylor testified to practically the same thing, as I recollect. There is no use in going into that."

Again on pages 353-54:

"Q. Now, you referred just now, Mr. Jordan, that if there was a minor repair that that was charged to operating expense, whereas if there was any important damage done so that they had to have replacement, that that was put to the capital account; is that correct?

"A. Yes.

"Q. The repairs would be something which kept it in temporary condition; is that right?

"A. It may be temporary and it may be permanent. It depends on how long the repairs would last.

"Q. Where it is of serious moment it goes into the capital account?

"A. Yes; if the line has to be replaced, the whole line, it is capital.

"Q. In the City's books and in the accounts stated here, there has been no charge made for any depreciation at all?

"A. No.

"Q. The general depreciation of the whole system, the obsolescence of the system, and none of those things have had one cent of charge made against them, have they?

"A. No, sir.

"Q. I mean so far as our operating expenses are concerned, either in the way of replacement or depreciation?

"A. Since January 1, 1927, the repairs amounted to approximately \$88,000; which is charged to expense, and all other items have been capitalized."

And again on page 355:

"Q. Now, you spoke to the Commonwealth's Attorney about replacement, in the various years, and I understood you to say that those replacements were from capitalization?

"A. Yes.

"Q. Neither one of them is incorporated in the account in operating expenses?

"A. No, sir."

It thus appears as an undisputed fact in this case that no item of replacements have been charged to operating expenses and that there has been no allowance, in any form, for maintenance and replacements, except repairs of a minor nature, and that such small repairs do not absorb any of the actual and substantial depreciation.

The Circuit Court understood and fully recognized that there had been a charge only of repairs of a minor nature, which were included in operating expenses and which the Court characterized as *de minimis*, frankly saying in its written opinion:

"Suffice it to say, that for the years under review they have been *de minimis*."

Yet, the Court erroneously construed the language of this Court in the Newport News case to mean that if allowance was made for anything of maintenance and replacement, however insignificant the replacement, no allowance could be made for depreciation, however great and extensive the depreciation. So construing the language of this Court, the Circuit Court felt impelled by that decision to deny any allowance for depreciation in any form, because of the fact that an allowance had already been made for a few minor repairs which were regarded as *de minimis*.

It will, of course, be understood that the City has neither asked nor been allowed any deduction on account of its capital expenditures, nor for maintenance or replacements, or extensions, all of which have been taken care of out of the capital fund.

It will be further understood that the depreciation, for which the City claims an allowance should be made, is that depreciation to its plant, beyond current maintenance and repairs, and which current maintenance and repairs do not reach.

As testified to by Mr. Taylor, depreciation is that which cannot be covered by current repairs.

SINKING FUND ANNUITY REPRESENTS DEPRECIATION.

One of the proved and generally used methods of taking care of depreciation is the Sinking Fund method. Cities generally adopt it. Bonds are issued for the capital investment. These bonds cover the period of the useful life of the objects of the investment. According to proved tables, a certain sum is paid into a Sinking Fund, which, with accrued interest, will accumulate a fund sufficient to pay the bonds at maturity, when the useful life of the object of the investment is assumed to be ended.

In *Holland v. McGuire* (Mich. Pub. Util. Comr.) P. U. R. 1920 B, this is said:

“Two general methods of setting aside reserves for the replacement of depreciable property are in general use—one of these is known as the ‘straight line’ method, and the other as the ‘Sinking Fund’ method.

“Under the ‘straight line’ method, amounts are set aside annually, which, without the interest accruals thereto or unaided by the earnings of the unexpended balance in such fund, will replace the depreciated property at the end of its useful life.

"Under the 'Sinking Fund' method, only such amounts are set aside annually, as with the interest accruals thereto, will replace the depreciated property at the end of its useful life.

"Both of these methods are fundamentally correct, and when properly applied, are fair to the consumer and the Utility alike.

"The Commission is of opinion that either method may be employed."

In *Pac. Ga. etc. v. Devlin* (Cal.) 203 Pac., 1058, 1062, the Court said:

"The Sinking Fund method of fixing the amount of depreciation consists in charging for depreciation an annual sum which with compounding interest thereon will at the termination of the estimated life of the investment replace the original costs, and if cut off at any given period the accumulation will represent the depreciated value to date."

In *United States v. Ludey*, 274 U. S. 295, Mr. Justice Brandeis said:

"The depreciation charge permitted as a deduction from the gross income in determining the taxable income of a business for any year represents the reduction, during the year, of the capital assets, through wear and tear of plant use. The amount of allowance for depreciation is the sum which should be set aside for the taxable year, in order that, at the end of the useful life of the plant in the business the aggregate of the sum set aside (with the salvage value) suffice to provide an amount equal to the original cost."

In Annotations to the United States Code the following appears:

"Deductions should be computed at such rate as might reasonably be expected to return to taxpayers cost of depreciable asset over period of useful life in business."

In accordance with foregoing postulate the following rates of depreciation were determined in income cases cited therein:

Office and store buildings	3%
Brick buildings used for factory and garage	4%
Office buildings	2½%

Brick, concrete and frame farm buildings	4%
Lumber mill	10%
Laundry Machinery	12%
Raisin Stemmer	10%
Machinery and Equipment in Fullers Earth Factory	5%
Furniture and fixtures	10%

U. S. Code Anno. Title 26—Page 128.

In the Knoxville case, *supra*, in which a material question was the proper amount to be allowed for depreciation of a water plant, the Supreme Court of the United States approved a deduction of two per cent. of the capital invested in the plant. A similar allowance in the instant case would amount to over \$220,000.00 per annum, or \$60,000.00 more than the deduction made by the City of Norfolk.

Section 86 of the Norfolk City Charter, under which City bonds are issued, makes it necessary for the Director of Public Works to certify as to the probable average life of the object for which the bonds are to be issued, and bonds may not be issued for a longer period.

It provides:

“In determining the probable life or probable average life of works or objects, as hereinafter provided, the Director of Public Works shall not deem the life of the following classes of works or objects to exceed the following periods, namely: Roadways or streets having at the time the debt is contracted railroad or street railway tracks thereon, fifteen years; roadways or all other streets, twenty years; iron bridges, thirty years; concrete bridges, forty years; parks or other real estate, fifty years; and all other works or objects not hereinabove specified, thirty years.”

In providing an annuity which will amortize the bonds, the law itself determines the life of the project and fixes the amount of depreciation.

That the annuities paid on water bonds are proper deductions to be made in determining profit from a water plant covered by such bonds, is recognized by the Constitution of Virginia. In fact, such deductions are required to be made in order to determine whether the utilities are self-sustaining.

Section 127 of the Constitution of Virginia provides:

“Bonds authorized by an ordinance enacted in accordance

with section One Hundred and Twenty-three, and approved by the affirmative vote of the majority of the qualified voters of the city or town voting upon the question of their issuance, at the general election next succeeding the enactment of the ordinance, or at a special election held for that purpose for a supply of water or other specific undertaking from which the city or town may derive a revenue; but from and after a period to be determined by the council, not exceeding five years from the date of such election, whenever and for so long as such undertaking fails to produce sufficient revenue to pay for cost of operation and administration (including interest on bonds issued therefor), and the cost of insurance against loss by injury to persons or property, and an annual amount to be covered into a sinking fund sufficient to pay, at or before maturity, all bonds issued on account of said undertaking, all such bonds outstanding shall be included in determining the limitation of the power to incur indebtedness, unless the principal and interest thereof be made payable exclusively from the receipts of the undertaking."

It is, therefore, seen that the law fixes the probable life of the plant, authorizes bonds to be issued covering such period, excludes them from the bonding limit, it self-sustaining, that is, if they break even on receipts and expenses, and determines what is necessary to be regarded as expense in order to determine whether they do break even or are self-sustaining, and it includes "an annual amount to be covered in a sinking fund sufficient to pay, at or before maturity, all bonds issued on account of said undertaking."

DEPRECIATION IN FACT.

While the City has adopted the method of Sinking Fund to take care of its depreciation and has requested a deduction for the year under illustration of \$167,379.10 therefor, the evidence shows that the actual depreciation was even greater than this amount and reached at least \$210,000.00 per annum.

The properties composing the Norfolk water plant are of varying character and the depreciation of each is obviously of a different degree. Some of it, such as real estate, will last for all time and will depreciate in value only as the march of progress may make it unfit for the use to which it is now applied, while other properties will depreciate a great deal more rapidly. A correct appraisal of depreciation would make it necessary to examine the specific properties com-

posing the plant and to appraise the depreciation of each of such component parts. This was done by two qualified experts who testified with respect thereto. Walter H. Taylor, III, perhaps knows more about this in actual experience than any other person. He has lived with the water plant for forty years. He is conversant with the development of the plant and also its depreciation and obsolescence. His testimony on this subject beginning on page 158 of the evidence, shows his knowledge of the situation and what really has happened in the way of depreciation of the identical kind of property in the last fifty years.

Speaking of the original plant, established in 1872, fifty years before the establishment of Lake Prince, Mr. Taylor says:

“There is practically nothing left of the original works except Lake Wright, a very small waterway embracing a few acres of land. The buildings have gone and the pumps have gone and the four dams have gone. Lake Joyce is no longer useful; Lake Bradford is no longer useful and Lake Taylor is no longer useful. * * * The pumps are gone; some that were installed in 1886 are obsolete and are used only as stand-by pumps. In 1922 we rebuilt that station in its entirety. There is not a vestige of the old plant that is left with the exception of these two particular pumps I will allude to, Worthington pumps, which were magnificent pumps in their days, but in the improvement of machinery in 1922 we found we could retire them and pay \$60,000.00 for a new pump, which saves in operation a large part of the interest and sinking fund.”

From the foregoing, it appears that even that class of property which would naturally be regarded as permanent and not subject to deterioration does, in fact, depreciate and become useless by reason of changes in condition and the requirement of the times. Mr. Taylor exhibits to the Court specimens of pipes and other materials and shows by physical demonstration the condition of depreciation. Having made a close and careful investigation and classification of the different properties composing the plant, he testified that there is an actual depreciation annually of \$210,000.00.

Mr. J. N. Chester, perhaps one of the best and most noted experts on water work plants in the United States, and owner of several water plants, who has been closely identified with the Norfolk water plant and devised it, in part, familiar with all of its details and who made a special investigation thereof with reference to the question of depreciation and who like-

wise classified the different component parts, reaches the conclusion that the depreciation is at least \$210,000.00 per year. This figure is \$50,000.00 more than the City paid as an annuity on the bonded indebtedness which we claim as a deduction in the place of depreciation designated as such. It will be observed that if the actual depreciation was charged off, no interest would accrue thereon; whereas, by setting aside an annuity to cover depreciation, compound interest would accrue and this would doubtless account for the difference.

The only witness who disagrees as to the actual amount of depreciation is another expert introduced by the County, and whose qualification as an expert we may frankly concede equals that of the other two witnesses mentioned. Mr. Pirnie states that, from such information as he has, he would appraise the depreciation at about two-thirds of the amount set aside in the Sinking Fund. He, however, frankly admits that he is not familiar with the property; that he has seen it only superficially when attending a meeting of the American Society of Engineers in Norfolk; that he had made no appraisal of it and that, without such appraisal, it was essential to see the parts of the property (Ev., p. 409), and that his appraisal was merely a speculation and guess. He admits that one equally as competent, who had had the opportunity and who knew the facts and conditions, would be better qualified to determine the amount of depreciation, and he also declares that Mr. Chester is a water works man of national reputation, that he is qualified to speak as an expert upon the question of depreciation and that he is reliable.

Such being the evidence bearing upon the question of depreciation, can the Court say that the sum set up by the City as Sinking Fund, which is \$50,000.00 less than the depreciation testified to by Taylor and Chester, is proved to be excessive?

Mr. Justice Brandeis, in speaking of the uncertainty in the useful life of the plant, says:

“Each unit has its individual life dependent upon the effect of physical exhaustion, obsolescence, inadequacy and public requirement. The physical duration of the life depends largely upon the conditions of the use; and these cannot be fore-told. The process of obsolescence is even less predictable. Advances in the arts are constantly being made which would require retirement at some time, even if the unit were endowed with perpetual physical life. But these advances do not proceed at a uniform pace. The normal

progress of invention is stimulated or retarded by the ever changing conditions of business. Moreover, it is the practical embodiment of inventions which produces obsolescence; and business conditions determined even more largely the time and the extent to which new inventions are embodied in improved machines. The march toward inadequacy, as distinguished from obsolescence, is likewise erratic. * * *

"A plant unit rarely remains in service until consumed physically. Scrap remains; and this must be accounted for, since it is the net expense of exhaustion of the plant which the depreciation charge is to cover. Such scrap value is often a very large factor in the calculation of plant expense. * * *

"There are many recognized methods for calculating these amounts, each method having strenuous advocates; and the amounts thus to be charged, in the aggregate as well as in the successive years, differ widely according to the method adopted. Under the straight-line method, the aggregate of the charges of the several years equals the net plant expense for the whole period of service life; and the charge is the same for all the years. Under the Sinking Fund method, the aggregate of the charges of the several years is less than the net plant expense for the whole period, because the proceeds of each year's charge are deemed to have been continuously invested at compound interest and the balance is assumed to be obtained from interest accumulations."

These sound observations of Mr. Justice Brandeis are pertinent in the present case. We are unable to lift the veil which conceals the future from our view, and it may be that with this restricted vision, Lake Prince may appear to us now to be permanent and sufficient for the needs of the water system for one hundred years or more. Fifty or sixty years ago, when Norfolk's population was around 35,000, it doubtless appeared that the five lakes, which then were developed into a water system, would be sufficient for years to come and would have a useful life of one hundred years, but experience has demonstrated that this was not true, and they are now abandoned and useless as a part of the water system:

It will be observed that Mr. Pirnie makes no analysis of the depreciation. In fact, he estimates the useful life only of the Lake Prince reservoir, which he estimates to be one hundred years. It is conspicuously significant that he was not interrogated as to the probable useful life of the other component parts of the system, the most expensive parts as well as the most susceptible to depreciation. He was not asked what would be the probable life of the pipes. On the

contrary, it is assumed that the estimate given by Mr. Taylor is correct. If Mr. Pirnie had thought that the useful life of the other parts of the property was different from that as testified to by Mr. Taylor and Mr. Chester, he would, without doubt, have been asked the question and would have testified thereto. It may be that his lack of information, which he admitted, did not enable to have an accurate opinion. How then can it be considered that his testimony discredits, and even more than that, disproves, the amount of depreciation testified to by Mr. Taylor and Mr. Chester.

The Circuit Court reached its conclusion that the water system was a source of profit by refusing any allowance, in any form, for depreciation in the water plant. The City's method of accounting for depreciation was the approved Sinking Fund method and the amount paid into the Sinking Fund, on account thereof, is shown by the evidence not to exceed the actual depreciation. The Circuit Court refused to allow this deduction. We submit that net revenue or profit cannot be correctly determined without a proper deduction for depreciation, either by the straight-line method or the Sinking Fund method, or by the allowance of maintenance and replacements which cover depreciation, and the Circuit Court erred in refusing to make any such allowance.

FIRE PROTECTION.

The Circuit Court included as profit an estimated sum of \$148,000.00 per year, upon the theory that in the construction of its plant a larger sum was invested in order to equip it for fire protection than would have been necessary if it had been equipped for the furnishing of water to its inhabitants for ordinary purposes alone, and that the City should charge itself with a fair return upon this investment.

Says the Court (Ev., p. 444):

"The other controverted question, namely, is the amount, if any, that should be charged to the City for the equipment, appliances and water necessary to reimburse the water department for the provisions which it has made and must at all times maintain in order to protect the City against the hazard of fire, the flushing of sewers, washing of streets, etc. The cost of this protection has been furnished to the City without charge.

"If the City was acquiring its water from an independent company, it would unquestionably be charged a sufficient sum to give a fair return for the service rendered, and this in

turn would depend, largely, upon the amount of investment necessary to provide the service."

It is not pretended that the City used any such amount of water for such purposes or received one penny as a charge for such service. The undisputed evidence is that the City did charge itself with the water it used in its public buildings, in its public schools, its jail and all public institutions, but that it did not charge for water used by the Fire Department or for flushing its streets. As to these, however, the undisputed testimony is that the amount of water actually used by the City for fire purposes and for flushing the streets did not amount to as much as \$5,000.00 a year; to be exact, \$4,-626.00 per year (See Ev., p. 373).

It is, therefore, submitted that if the City is chargeable with water which it furnishes itself for fire and street purposes, the only amount which could be charged would be that which it actually received and which is *de minimis*.

The Circuit Court, however, proceeded upon the theory that it ought to pay a *fair return* upon the investment, whether it in fact received anything therefrom or not. In other words, if it had cost the City two million dollars additional to equip its water plant for fire purposes and that 7% per annum would be a fair return to the City for such investment, then the City should charge itself with \$140,000.00 per year for fire protection; and that this is profit, even though the City made no charge for fire protection and received nothing therefrom. There is nothing in the record to show just what is the investment in fire equipment.

The Circuit Court refers to the testimony of Mr. Pirnie as to what is a proper charge for fire protection. Mr. Pirnie presents a method for determining a proper charge for fire protection, which he says has been used in some cases. This is quite a different thing from profit arising from such service. If the City of Norfolk were furnishing fire protection to some other City, or if some other City or water company were furnishing fire protection to it, the question of what is a proper charge would be pertinent, and whatever was paid by one to the other would be revenue, but where the City is furnishing the fire protection to itself, whatever may be a proper charge cannot be revenue or profit. A proper fee which an attorney should charge for preparing a deed might be established, and if he prepared the deed for someone else and collected the money it would be revenue, but if he prepared the deed for himself, there would be neither revenue nor profit in the transaction.

In fact, Mr. Pirnie submits two methods for determining a

charge for fire protection service. The first formula is to take 25% of the interest and annuity on outstanding bonded indebtedness and 5% of the expense of operation. The second formula is to ascertain the number of inch-feet of pipe and multiply it by $1\frac{1}{2}\%$ and add \$10.00 or \$12.00 for each fire hydrant. And he states that each of these formulas, as applied to what he assumes to be the situation in Norfolk, would produce practically the same result; namely, for 1927, \$165,738.00.

It is apparent that if the basic figures were changed, the two formulas would produce far differing results and that, necessarily, one or the other, or probably both, would be inaccurate. For instance, if the bonded indebtedness and expense of operations were doubled, the inch-feet remaining the same, the fire charge under the first formula would be \$337,000.00, and under the second formula \$165,000.00, and *vice versa*. If there was no outstanding bonded indebtedness, under the first formula the amount would be only \$11,857.00, and under the second formula \$165,000.00.

The fallacy lies in the fact that the two things "inch-feet" and "expenses" do not necessarily have any specific relation with each other, nor any specific relation with the amount of water used for fire purposes. He refers to having put one of such rates into effect between Village of Pelham New York, and another Water District. It is assumed that the Village and the Water District were two separate corporations. He has cited no instance in which a city has been charged with the water consumed for fire protection from its own plant in order to determine whether the City itself had made a profit.

Under such theory, the Fire Department of the City would be a source of revenue and profit to the City, and every other governmental function of the City would be a source of revenue and profit.

It was claimed that because the City gets this intangible benefit of potential fire protection free it constitutes profit. It was claimed that such charge should be included by reason of the following language used by Justice Chinn in the decision in the Newport News case:

"The revenue or profit referred to is not limited to that derived from the outside use of the water works property, or any other particular use, but can only mean revenue or profit derived from all sources pertaining to its use, including that derived from the use by the City itself for its own municipal purposes, as well as that derived from the use of the system outside of the city's limits."

It is apparent from the reading of this statement that by the use of the expression, "its own municipal purposes", is meant the supplying of water to its own inhabitants in contradistinction to supplying water to outsiders. Under the previous Virginia decisions, as well as those of other states in similar cases, when the exemption depended upon the use as being wholly for municipal purposes, it was uniformly held that the supplying of water to the inhabitants of the City was for municipal purposes and it was clearly in this sense that the quoted language of the opinion was used. Justice Chinn was conveying the idea that the profit was not limited to that received from water sold to inhabitants outside of the City, but included also that sold to inhabitants within the City, the latter being regarded as being "for its own municipal purposes".

It never has been the intention of the law to impose a tax on property used for municipal purposes. Its taxability arises only when it becomes a commercial proposition, in which the object, purpose and effect are to derive a substantial pecuniary profit or revenue therefrom.

It is axiomatic that a city cannot make a profit in selling to itself. It is self-evident that if the City paid any sum, large or small, to itself for the water it uses, or for protection it furnished itself, its financial status is not in the least changed.

A Power Company selling electric current to the public would not include in its income tax return the amount of current used for its own purposes. A bank using the ground floor of its building for its own purposes, while renting the offices in the upper stories of the building to tenants, would not include in its balance sheets as an item of profit the rental use of the ground floor. A Railroad Company would not include in its profit the use of private cars and other equipment used by its officers. All of these things are uses of property of the owner, but they do not constitute profit.

The use by a city of its own water for fire purposes can bring nothing into its treasury. Even the benefit or advantage that does accrue is for those who are the consumers of the water. The city itself makes nothing by the transaction. The revenue or profit contemplated by the taxing provision of the Constitution is a commercial revenue or profit. The owner of property, which he partially hires to others, makes no profit in the non-commercial use of the property by himself.

Certainly the fact that the City has its own water plant, which furnishes a means of fire protection, is a benefit to the City. It may be true that if the City obtained its water supply from a private corporation, there would be included in

the contract price a sufficient sum to justify the investment of the private company in its equipment for fire protection, so that the City in furnishing its own water plant saves an additional expense. This is economy. But is it profit, such profit as was in contemplation of the Constitution as forming the basis of taxation? There is a manifest difference between benefit and profit. Economy is not revenue. It may produce it and it may also prevent deficit. If I attended to my own furnace I would save the amount that I would otherwise have to pay a janitor for that service, but I haven't made any profit.

Revenue or profit, as used in the Constitution does not mean a benefit or economy. It means the acquisition of something tangible, an actual income.

There can be, perhaps, no greater or more important governmental service which a City may perform for its people than that of affording protection against fire. The Constitution which exempts the property, when used for governmental purposes, and provides for taxation only when it becomes a source of revenue or profit, cannot reasonably be construed to mean that the intangible benefit, as great as it may be, which is derived from such highly governmental provision, shall be regarded as such revenue or profit.

To so construe it would be to hold the property of a city taxable solely by reason of its highly governmental use.

The revenue or profit, upon which the taxability of municipal property must be determined, necessarily means a tangible commercial profit and not an intangible benefit, especially an intangible benefit of a governmental nature.

In 50 Corpus Juris 645, this is said:

"Profits must be something of a tangible or pecuniary nature. Intangible benefits, not capable of measurement in definite terms, although of value to the recipients, cannot be called 'profits'."

See to the same effect *Read v. Tidewater Coal Ex. (Del.)*, 116 Atl. 898.

In *Curry v. Waner*, 42 Atl. 425, profit was defined to mean: "Acquisition beyond expenditure, or the excess of sale or value received over cost."

In *People v. San Francisco Savings Union*, *supra*, 13 Pac. 498, 500, this is said:

"Under these definitions, it is not easy to comprehend how profits or surplus profits can consist of earnings never yet received. The term imports an excess of receipts over ex-

penditures, and without *receipts* there can not properly be said to be profits."

We further insist that the revenue or profit which would subject municipal property to taxation must be a profit to the municipality as such and not simply a benefit or profit arising to the individual citizens of the municipality.

In *Read v. Tidewater Coal Ex. (Del.)*, 116 Atl. 898, 904, this is said:

"When we speak of a corporation for profit, I take it also that we mean profit coming to, or belonging to, the corporation *qua* such, as distinct from its members or stockholders. Barring cases where profits are improperly diverted directly to the corporation members and not conveyed to them through the channel of the corporate treasury, which cases would rest on a distinct footing, the term 'profit' as employed in the section under discussion means gain or earnings which are expected to come into the possession of the corporation."

The Circuit Court, in its opinion, referred to some statement made by Colonel Maury. Attention is called to the fact that the proffered statement of Colonel Maury into the evidence was excluded by the Court as being improper evidence. (R., p. 368.) We do not know what Colonel Maury had reference to. It is clear, however, that whether the potential use of the water works for fire protection should be regarded as profit is, under the circumstances of this case, a question of law for the Court.

GENERAL OBSERVATIONS.

Doubtless every City in this State, having a municipal water plant, furnishes water to its suburban communities. This is not done with the idea of pecuniary profit, for, as a matter of fact, the comparatively small supply generally necessary for that purpose is not susceptible of material profit. Water is furnished those communities for the same reasons it is furnished to the residents of the City itself. While the geographical limits of the City do not include such communities, physically they are a part of the City, and every reason of sanitation, of health, of fire protection, and of necessity, which makes the furnishing of water to its citizens a municipal purpose, applies as well to such communities.

These communities cannot maintain a water system of their own and it would, indeed, be a hardship upon them if the City

should be compelled to withdraw this service. If taxes are to be imposed by reason of such service, it is certain one of two things must occur, either the service must be withdrawn or else the citizens of the City must be taxed to supply it. This is certainly not the policy of the State, as declared in its Constitution and as interpreted so often by this Court.

If Sinking Fund annuities which, in fact, are designed to cover the depreciation, are to be regarded as profit, then every municipality in this State which has issued bonds for its water works must be held to derive profit and to be taxable, for the Constitution requires the Sinking Fund annuities to be paid out of water receipts. Such construction of the law would mean nothing but a contradiction of the constitutional provisions. We would have Section 127 of the Constitution requiring cities to pay the annuities into the Sinking Fund and Section 183 of the Constitution exempting cities from taxation and yet, at the same time, denying the exemption if they did what they were required to do in Section 127.

As a positive proof that the annuities paid into the Sinking Fund have not produced a profit or asset to the City, but have served merely to keep the plant in condition, covering depreciation and obsolescence, stands the evidence of Mr. Taylor (Ev., p. 168), that the total bonds retired during the entire period of existence of the water plant, from 1872 to the time of the hearing in this case in 1934, was approximately only \$600,000.00. This is corroborated by the County's auditor, Mr. Jordan, on page 341.

If a city is to be charged, as profit, what would be a fair return for its investment for fire protection, whether it actually received a cent therefor or actually put it into use for such purpose, or not, as is held by the Circuit Court in this case, then the water plant of every city in this State would be taxable, for a fair return upon the investment necessarily means profit.

If the City were required to pay \$148,000.00 for fire protection, it would have to be paid by a tax upon its citizens, for it is certain that its receipts are not sufficient to do so. Certainly that which the citizens would be required to pay by the levy of a tax cannot be considered as profit.

As said by Justice Chinn in the Newport News case, on page 597:

"Nor could there be a profit if the City has to levy a tax upon the property of its own citizens to meet the payment of principal or interest of said bonds, as same become due."

For the foregoing reasons, and because this property of the City is exempt from taxation under Section 183 of the Constitution, your petitioner prays that a writ of error and *supersedeas* may be awarded it, and that the said order or judgment of the Circuit Court of Nansemond County herein complained of may be reviewed and reversed, and that this Court may enter such order as may be proper.

The right to be orally in favor of the granting of this petition is requested.

A copy of this petition was delivered to Charles B. Godwin, Jr., attorney for Nansemond County, the opposing counsel in the trial court, on the 19th day of December, 1935.

This petition will be adopted as brief of plaintiff-in-error.

CITY OF NORFOLK,
By JOHN N. SEBRELL,
City Attorney.

JOHN N. SEBRELL,
JONATHAN W. OLD, JR., p. q.

I, John N. Sebrell, an attorney practicing in the Supreme Court of Appeals of Virginia, do hereby certify that in my opinion it is proper that the decision and judgment herein complained of should be reviewed by this Honorable Court.

JOHN N. SEBRELL.

Received Dec. 20, 1935.

J. W. E.

January 17, 1936. Writ of error and *supersedeas* awarded by the court. No bond.

M. B. W.

RECORD

VIRGINIA:

In the Circuit Court of Nansemond County.

APPLICATION OF THE CITY OF NORFOLK FOR CORRECTION AND EXONERATION FROM THE PAYMENT OF CERTAIN ERRONEOUS ASSESSMENTS TAXES AND LEVIES FOR THE YEARS 1928 TO 1932, BOTH INCLUSIVE.

VIRGINIA:

Pleas before the Circuit Court of Nansemond County at the courthouse of said County on the 8th day of November, 1935.

BE IT REMEMBERED, That, heretofore, to-wit: In the Clerk's Office of the Circuit Court of Nansemond County on the 15th day of December, 1932, came City of Norfolk, by its attorney, and filed its Application for correction of and exoneration from the payment of certain erroneous assessment of taxes and levies for the years 1928 to 1932, both inclusive, against the County of Nansemond, in the words and figures following:

To:

Mr. Charles B. Godwin, Jr., Commonwealth's Attorney, Nansemond County, Virginia; Mr. R. C. Norfleet, Commissioner of Revenue, Nansemond County, Virginia:

You and each of you are hereby notified that at Ten o'clock A. M. on the 19th day of December, 1932, or as soon thereafter as counsel may be heard, the undersigned City of Norfolk will apply to the Circuit Court of Nansemond County, Virginia, at the Court House thereof, for the correction of certain erroneous assessment of certain property assessed in its name by said Nansemond County, and for the correction of certain erroneous levies of taxes thereon, made by said County, for the years 1928 to 1932, both inclusive,
page 2 } as set forth in the attached application, which is made a part hereof.

Dated the 13th day of December, 1932.

CITY OF NORFOLK,
By JNO. N. SEBRELL,
City Attorney.

Service of the above notice is hereby accepted this the 13 day of December, 1932.

CHAS. B. GODWIN, JR.,
Commonwealth's Attorney, Nansemond County.
R. C. NORFLEET,
Commissioner of Revenue, Nansemond County.

Virginia:

In the Circuit Court of Nansemond County.

In the matter of

Application of the City of Norfolk for correction of and exoneration from the payment of certain erroneous assessments of taxes and levies for the years 1928 to 1932, both inclusive.

APPLICATION.

To the Honorable James L. McLemore, Judge of the Circuit Court of Nansemond County:

Your applicant, the City of Norfolk, a municipal corporation of the State of Virginia, respectfully shows unto this Honorable Court the following:

1. That it is a political subdivison of the State of Virginia.

2. That in the years 1931 certain property in page 3 } Nansemond County, Virginia, was erroneously assessed, in the name of your applicant, for taxation for the years 1928, 1929, 1930 and 1931, and taxes thereon have been erroneously levied against your applicant for said years, as follows:

Property	Year	Assessed Value	Taxes & Levies including interest & penalties
<i>Sleepy Hole District:</i>			
Pipe Line	1928	\$137,959.00	\$3,492.10
Pipe Line	1929	137,959.00	3,609.17
Pipe Line	1930	137,959.00	3,422.09
Pipe Line	1931	137,959.00	2,828.07
<i>Lower Chuckatuck District:</i>			
Land—Stand Pipe & Pipe Line (Pipe Line)	1928	95,475.00	2,357.84
Land adjacent to Lake	1928	19,366.00	478.26
Lake—Dam—Pumping Station & Improvements	1928	661,972.00	16,348.06
Pipe Line—Land—Stand Pipe & Pipe Line	1929	95,475.00	2,454.69
Land Adjacent to Lake	1929	19,366.00	497.90

3 5488.16

Lake Prince—Lake—Dam—
Pumping Station & Im-
provements

1929 661,972.00 16,992.50

page 4 }

Property	Year	Assessed Value	Taxes & Levies including Interest & Penalties
<i>Lower Chuckatuck District (Cont'd):</i>			
(Pipe Line) (Land Stand Pipe & Pipe Line)	1930	\$ 95,475.00	\$2,315.75
Land Adjacent to Lake	1930	19,366.00	469.72
Lake Prince—Lake—Dam— Pumping Station & Im- provements	1930	661,972.00	16,056.13
(Pipe Line) (Land—Stand Pipe & Pipe Line)	1931	95,475.00	1,909.50
Land Adjacent to Lake	1931	19,366.00	387.32
Lake Prince (Lake—Dam— Pumping Station & Im- provements)	1931	661,972.00	13,239.44

3. That said property has also been erroneously assessed for taxation by said County for the year 1932, and taxes thereon for said year have been erroneously levied against your applicant, as follows:

Property	Assessed Value	Taxes
<i>Sleepy Hole District:</i>		
Pipe Line	\$137,959.00	\$2,069.38
<i>Lower Chuckatuck District:</i>		
Land Adjacent to Lake	19,366.00	290.49

Property	Assessed Value	Taxes
<i>Lower Chuckatuck District (Cont'd):</i>		
Lake Prince, Dam, Pumping Station & Imp.	\$661,972.00	\$9,929.58
Pipe Line	95,475.00	1,432.13

4. That said assessments and levies were not made in accordance with law.

5. That said assessments and levies are contrary to Section 183 of the Constitution of Virginia, Sections 435 and 435-a of the Tax Code of Virginia, and are of property not assessable for taxation by said County.

Supreme Court of Appeals of Virginia.

6. That said assessments and levies are otherwise erroneous, illegal and excessive.

7. That your applicant is hereby aggrieved by the aforesaid assessments and levies.

8. That the aforesaid erroneous assessments and levies were not caused by the wilful failure or refusal of your applicant to furnish a list of its properties to the tax assessing authorities of said County, as the law required.

9. That the aforesaid assessments for the years 1928 to 1931, both inclusive, were made in the year 1931; and this application is made within the time limit prescribed by law.

Wherefore, your applicant prays that the aforesaid erroneous assessments and levies be adjudged illegal
 page 6 } and erroneous, that said erroneous assessments and levies be corrected, that it be exonerated from the payment of the taxes and levies so erroneously assessed against it, and that it be granted such further and other and general relief in the premises as it may be entitled to under the law.

And your petitioner will ever pray, etc.

CITY OF NORFOLK,
 By I. WALKER TRUXTUN,
 City Manager.

JNO. N. SEBRELL,
 JONATHAN W. OLD, JR.,
 Counsel for Petitioner.

State of Virginia,
 City of Norfolk, to-wit:

I. Walke Truxtun, City Manager of the City of Norfolk, being duly sworn, says that the allegations contained in the foregoing application are true, to the best of his knowledge, information and belief.

I. WALKER TRUXTUN.

page 7 } Subscribed and sworn to before me, a Notary Public in and for the City and State aforesaid, in my City and State aforesaid, this the 13th day of December, 1932.

RUTH F. CARNER,
 Notary Public.

My Commission expires the 26th day of December, 1933.

And afterwards, to-wit: Order entered in the Circuit Court of Nansemond County on the 19th day of December, 1932.

Virginia:

In the Circuit Court of Nansemond County.

In the matter of

Application of the City of Norfolk for correction and exoneration from the payment of certain erroneous assessments of taxes and levies for the years 1928 to 1932, both inclusive.

This day came the City of Norfolk, by counsel, and presented its application for the correction of and exoneration from the payment of certain erroneous assessments of taxes and levies for the years 1928 to 1932, both inclusive, made by the County of Nansemond against the City of Norfolk, notice of which has been duly given to the Commonwealth's Attorney and to the Commissioner of the Revenue of said County, which application is ordered to be placed on the docket of this Court, and further hearing of the same is continued.

page 8 } And afterwards, to-wit: Order entered in the Circuit Court of Nansemond County on the 10th day of July, 1933.

Virginia:

In the Circuit Court of Nansemond County.

Application of the City of Norfolk for correction and exoneration from the payment of certain erroneous assessments of taxes and levies for the years 1928 to 1932, both inclusive.

Continued until the 5th day of October, 1933.

page 9 } And afterwards, to-wit: Order entered in the Circuit Court of Nansemond County on the 8th day of January, 1934.

Virginia:

In the Circuit Court of Nansemond County.

Application of the City of Norfolk for correction and exoneration from the payment of certain erroneous assessments of taxes and levies for the years 1928 to 1932, both inclusive.

This day came Chas. B. Godwin, Jr., Commonwealth's Attorney for Nansemond County, at the calling of the docket of this court at its January term, 1934, and asked for a Bill of Particulars in the above matter. It is, therefore, ordered that the applicant furnish to Chas. B. Godwin, Jr., Commonwealth's Attorney for Nansemond County, a Bill of Particulars on, or before March 1st, 1934, and this matter is set for hearing on March 14th, 1934.

page 10 } And afterwards, to-wit: Order entered in the
Circuit Court of Nansemond County on the 9th
day of July, 1934.

Virginia:

In the Circuit Court of Nansemond County.

Application of the City of Norfolk for correction and exoneration from the payment of certain erroneous assessments of taxes and levies for the years 1928 to 1932, both inclusive.

Continued until the 24th day of September, 1934.

page 11 } And afterwards, to-wit: Bill of Particulars filed
in the Clerk's Office of the Circuit Court of Nansemond on the 10th day of September, 1934.

Virginia:

In the Circuit Court of Nansemond County

In the matter of

Application of the City of Norfolk for correction and exoneration from the payment of certain erroneous assessments of taxes and levies for the years 1928 to 1932, both inclusive.

BILL OF PARTICULARS.

The City of Norfolk, for Bill of Particulars in this cause, states as follows:

(1) It is not proposed to contest, in this proceeding, the valuations placed upon the property assessed.

(2) If the Court shall be of opinion that the property is assessable for taxation, at all, then the assessment is erroneous for the years 1930 and following, because the assessment should be only for that portion of the fair market value thereof in the proportion that the gross revenue derived from consumers outside of the limits of the City bears to the gross revenue received from the whole utility, in accordance with Acts of 1930, page 833.

(3) The assessment is erroneous *in toto*. The property is exempt from assessment and from taxation under the provisions of Section 183 of the Constitution of Virginia, and Acts of the General Assembly, enacted pursuant thereto.

(4) That none of the lands or buildings attempted to be assessed for taxation, or any part thereof, is leased, or is otherwise a source of revenue or profit, within the meaning of the Constitution and Statutes.

(5) The property sought to be taxed in this case is a part of one of the sources of water supply for the City of Norfolk, and is used principally and dominantly for the supplying of water to consumers in the City of Norfolk. Only a very small part of said water is supplied to consumers outside of the City, and that is supplied to a portion of Norfolk County and to the City of South Norfolk. These communities are adjacent to Norfolk City and, together with it, constitute, physically, one continuously built-up community, so related as to have an interdependence in business, health, safety, fire, protection and general welfare, which makes the furnishing of water thereto, independently of any question of revenue therefrom, as essential and necessary as it is to furnish water to its own inhabitants.

(6) That the dominant purpose in the use made of these properties is to furnish an adequate supply of water to consumers in Norfolk City, and that the revenue received from any other source, if any, is incidental, negligible and *de minimis*.

(7) That the rates for the charge of water furnished, both in and out of the City of Norfolk, are calculated and limited to cover the cost of the City furnishing such water to the consumer, and any and all

variations in the rates, are determined by the cost of production and delivery. That the rates are made to cover such costs only, and not with any intention, purpose or effect of creating revenue or profit.

(8) That the water furnished outside of the City is not the source of any revenue or profit.

(9) Depreciation or necessary replacement more than offsets any revenue or profit which may be received at any time.

(10) That the water supplied outside of the City does not all come from the plant of which the property in controversy is a part. We reserve the right to prove, if it shall be a fact, that none of said water is so used.

(11) Attached are Exhibits "A" and "B", showing water rates charged and information as to receipts and disbursements, requested by the Attorney for the Commonwealth.

CITY OF NORFOLK,
By JNO. N. SEBRELL,
City Attorney.

EXHIBIT "A".

page 14 } DEPARTMENT OF PUBLIC WORKS

DIVISION OF WATER SUPPLY

NORFOLK, VA.

Ordinance Governing

Metered and Unmetered Water Rates

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1. That an ordinance entitled "An Ordinance prescribing a service charge for water consumers, fixing the rates to be paid for water, and repealing conflicting ordinances", adopted February 20, 1923, as amended by an ordinance entitled: "An Ordinance to amend and re-ordain Subsection (a) of section 2 of an ordinance entitled 'An Ordinance prescribing a service charge for water consumers, fixing the rates to be paid for water, and repealing conflicting

ordinances:" adopted February 20, 1923," adopted November 12, 1924, be amended and reordained so as to read as follows:

Sec. 1. That from and after the date this ordinance becomes effective each person, firm or corporation using water from the City water system shall for each property connected with said water system pay a service charge for each such connection as follows:

5/8-inch Meters	\$ 6.00	per year or	\$ 1.50	per quarter
3/4-inch Meters	8.00	per year or	2.00	per quarter
1 -inch Meters	16.00	per year or	4.00	per quarter
1 1/2-inch Meters	36.00	per year or	9.00	per quarter
2 -inch Meters	50.00	per year or	12.50	per quarter
3 -inch Meters	100.00	per year or	25.00	per quarter
4 -inch Meters	180.00	per year or	45.00	per quarter
6 -inch Meters	400.00	per year or	100.00	per quarter
8 -inch Meters	800.00	per year or	200.00	per quarter

Sec. 2. That in addition to the service charge hereinabove provided for, each consumer of water shall, from and after the date when this ordinance becomes effective, pay therefor at the following rates:

(a) Consumers using 300,000 gallons or less per quarter shall pay twenty-five cents (25c.) per 1,000 gallons; provided that the minimum charge per quarter shall be One Dollar (\$1.00); and provided, further, that consumers residing beyond the corporate limits of the City of Norfolk using 300,000 gallons or less per quarter shall pay forty cents (40c.) per 1,000 gallons, and a minimum charge per quarter of Two Dollars (\$2.00).

(b) Consumers (other than those residing outside the city limits) using over 300,000 gallons and not more than 1,200,000 gallons per quarter shall pay twenty-five cents (25c.) per 1,000 gallons for the first 300,000 gallons, and fifteen cents (15c.) per 1,000 gallons for all water consumed in excess of 300,000 gallons.

(c) Consumers using water in excess of 1,200,000 gallons per quarter shall pay twenty-five cents (25c.) per 1,000 gallons for the first 300,000 gallons, fifteen cents (15c.) per 1,000 for the next 900,000 gallons, and eight cents (8c.) per 1,000 gallons for all water consumed in excess of 1,200,000 gallons per quarter.

Sec. 3. Consumers using water where meters have not been installed shall pay the following flat rate charges, payable quarterly in advance: \$12.00 per annum for the first faucet;

\$3.00 per annum for the first closet; and for each additional closet \$1.00 per annum;

\$3.00 per annum for the first bathtub, and for each addition bathtub \$1.00 per annum;

\$6.00 each per annum for hose connections;

\$1.00 each per annum for washstands;

\$3.00 each per annum for laundry tubs;

provided that consumers residing beyond the corporate limits of the City of Norfolk shall pay for flat rate service 20% more than the above schedule.

Sec. 4. Bills for water furnished in all districts shall be payable for Section 1 of each district between the 1st and 10th of the month and for Section 2 of each district between the 15th and 25th of the month in which they fall due.

Should any bill not be paid when due the customer shall be deemed delinquent and the Division of Water Supply shall cause the water to be shut off from the premises from which the account is delinquent, and the water shall not again be turned on until all arrearages and charges shall have been paid, including a One Dollar (1.00) charge for turning the water on, provided the premises are occupied by the same consumer who incurred the bill, and provided further that any consumer delinquent or in arrears shall settle all past indebtedness wherever incurred before again being served city water.

Sec. 5. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Sec. 6. That all quarterly service and minimum charges shall be paid in advance.

Section 2. That this ordinance, being an emergency ordinance, shall be in effect from and after its adoption.

Adopted by the Council December 1st, 1924 and September 11th, 1928

Consumers in South Norfolk pay the same rate as Norfolk City, plus 10%.

The Town of Virginia Beach is furnished water in volume at 10c per 100 gallons. The Town itself distributes to its consumers at its own rates.

CITY OF NORFOLK, VIRGINIA. EXHIBIT "B"

STATEMENT OF OPERATION: BUREAU OF WATER

(Compiled from annual audit reports)

REVENUE	1927	1928	1929	1930	1931	1932
Water only—Actual Receipts	831,831.74	818,121.11	846,741.41	862,950.41	865,626.93	845,838.99
Water Rents	\$838,953.10	\$843,490.45	\$870,444.44	\$879,391.28	\$878,982.04	\$879,800.07
Less: loss in collection, estimated	12,841.85	12,000.00	12,000.00	12,000.00	16,000.00	15,000.00
	826,111.25	831,490.45	858,444.44	867,391.28	862,982.04	864,800.07
Penalty	8,272.16	7,345.57	2,054.11	1,246.00	1,007.00	1,266.00
Fishing	5,911.00	3,427.15	3,766.10	6,217.95	5,725.08	3,868.40
Rent of land	675.00	4,479.50	1,479.00	2,600.00	2,077.82	1,200.00
Rent meters for fire purposes	541.00	541.00	541.00	541.00	529.00	499.00
Sale old equipment, Junk, etc.	.....	733.72	414.46	1,247.31	269.27	.....
Total Income	<u>\$841,510.41</u>	<u>\$848,017.39</u>	<u>\$866,699.11</u>	<u>\$879,243.54</u>	<u>\$872,590.21</u>	<u>\$871,633.47</u>

EXPENSE						
Ordinary	\$237,149.96	\$245,390.89	\$247,107.08	\$240,936.69	\$244,550.61	\$200,000.11
Interest on Bonded						
Debt	454,935.17	463,954.90	469,003.84	471,758.21	477,063.71	449,699.27
Sinking Fund						
Annuity	160,618.68	164,892.46	167,379.10	167,293.26	171,265.16	162,894.05
Total Charges	\$852,703.81	\$874,238.25	\$883,490.02	\$879,988.16	\$892,879.48	\$812,593.43
PROFIT	11,193.40	26,220.86	16,790.91	744.62	20,289.27	59,040.04
	<u>841,510.41</u>	<u>848,017.39</u>	<u>866,699.11</u>	<u>879,243.54</u>	<u>872,590.21</u>	<u>871,633.47</u>

SUMMARY

Loss for years 1927 to 1931, inclusive	\$75,239.06
Profit for year 1932	59,040.04
Net loss for years 1927 to 1932, inclusive	<u>\$16,199.02</u>

NOTE: In the above statement there should be deducted from gross revenue for each year the sum of \$12,000.00 representing interest paid by Virginia Beach on construction of water main.

The total amounts received from water sold to consumers outside of the City for the respective years are as follows:

1927	1928	1929	1930	1931	1932
\$53,060.58	\$59,991.67	\$69,168.76	\$77,641.28	\$79,063.86	\$80,406.84

page 16 } And afterwards, to-wit: Grounds of Defense
filed in the Clerk's Office of the Circuit Court of
Nansemond County the 18th day of September, 1934.

Virginia:

In the Circuit Court of Nansemond County.

In the matter of

Application of the City of Norfolk for correction and ex-
oneration from the payment of certain erroneous assess-
ments of taxes and levies.

GROUND OF DEFENSE.

Nansemond County, Virginia, expects to rely upon the fol-
lowing as its grounds of defense in the above-entitled matter:

(1) That the assessment made upon the properties of the
City of Norfolk is less than the proper amount, and that the
Court will be asked to order that the Applicant pay the
proper taxes.

(2) That the properties of the City of Norfolk situated in
Nansemond County are assessable for taxation; that said
properties are a source of revenue, or profit, to the Appli-
cant, and taxable for the years 1928 and 1929 pursuant to
Section 183, of the Constitution of Virginia, and Acts of the
General Assembly enacted pursuant thereto, and taxable for
the year 1930, and each subsequent year, pursuant to Sec-
tion 183, of the Constitution of Virginia, and Acts of the
General Assembly enacted pursuant thereto, and Section 435
(a), of the Tax Code of Virginia.

(3) That a portion of the lands owned by the
page 17 } City of Norfolk are leased for revenue and profit;
that fishing privileges are sold in the various lakes
owned by the City of Norfolk, and that large amounts of
water are sold to consumers outside of the City of Norfolk
at a rate greatly in excess of the rate charged to consumers
within the City of Norfolk.

(4) All allegations contained in the application of the City
of Norfolk, and in Paragraphs 3, 4, 5, 6, 7, 8, 9, and 10, of
the Bill of Particulars of the Applicant, are denied.

(5) It is denied that the City of Norfolk sustained a loss
of its properties for the year 1928, or any year there-
after, and, on the other hand, it is alleged that the City of
Norfolk made a substantial profit, and that its properties

were a source of large revenue for the year 1928, and each year thereafter.

NANSEMOND COUNTY, VIRGINIA,
By CHAS. B. GODWIN, JR.,
Commonwealth's Attorney.

page 18 } And afterwards, to-wit: Order entered in the
Circuit Court of Nansemond County on the 29th
day of October, 1934.

Virginia:

In the Circuit Court of Nansemond County.

Application of the City of Norfolk for correction and exoneration from the payment of certain erroneous assessments of taxes and levies for the years 1928 to 1932, both inclusive.

This day came the City of Norfolk, by its attorneys, and the County of Nansemond, by its attorneys, and neither party desiring a jury, the Court proceeded to hear the evidence and argument of counsel, and having heard a part of the evidence, this case is continued until October 30th, 1934.

page 19 } And afterwards, to-wit: Order entered in the
Circuit Court of Nansemond County on the 30th
day of October 1934.

Virginia:

In the Circuit Court of Nansemond County.

Application of the City of Norfolk for correction and exoneration from the payment of certain erroneous assessments of taxes and levies for the years 1928 to 1932, both inclusive.

This day came again the parties by their attorneys, and the court proceeded further to hear the evidence and argument of counsel, and this case is continued until the 26th day of November, 1934 in order that the attorneys for the County of Nansemond may make an audit of the accounts of the Water Department of the City of Norfolk.

page 20 } And afterwards, to-wit: Order entered in the
Circuit Court of Nansemond County on the 3rd
day of December, 1934.

Application of the City of Norfolk for correction and ex-
oneration from the payment of certain erroneous assess-
ments of taxes and levies for the years 1928 to 1932, both
inclusive.

This day came again the parties by their attorneys, and
the court proceeded to hear further evidence in this case, and
after hearing all of the evidence, this case is continued un-
til the 16th day of January, 1935, at which time the court
will hear the argument of counsel.

page 21 } And afterwards, to-wit: Order entered in the
Circuit Court of Nansemond County on the 16th
day of January, 1935.

Application of the City of Norfolk for correction and ex-
oneration from the payment of certain erroneous assess-
ments of taxes and levies for the years 1928 to 1932, both
inclusive.

This day came again the parties, by their attorneys, and
thereupon they proceeded with the argument of the case, and
after hearing the argument of counsel, the court doth take
time to consider of its judgment, and this case is continued.

page 22 } In the Circuit Court of Nansemond County
Virginia.

Application of the City of Norfolk for correction and ex-
oneration from the payment of certain erroneous assess-
ments of taxes and levies for the years 1928 to 1932, both
inclusive, from the County of Nansemond.

TESTIMONY.

Before Hon. James L. McLemore, Suffolk, Virginia, Octo-
ber 29-30; December 3, 1934.

Present: Messrs. John N. Sebrell, Jonathan W. Old and
Robert W. Shultice for the City of Norfolk; Mr. Charles B.
Godwin for the County of Nansemond.

Phlegar & Tilghman,
Shorthand Reporters,
Norfolk, Virginia.

page 23 } A. P. BREEDEN,
a witness on behalf of the City of Norfolk, being
duly sworn, testified as follows:

Examined by Mr. Sebrell:

Q. Mr. Breedon, you are A. P. Breedon?

A. Yes, sir.

Q. What position do you hold in the City of Norfolk?

A. City Auditor.

Q. How long have you been connected with the Auditor's Office of the City of Norfolk?

A. Since January, 1920.

Q. You have been City Auditor how long?

A. Since August 1st, of this year.

Q. Prior to that time?

A. Deputy City Auditor and clerical positions in the office.

Q. Since what time?

A. Since January, 1920.

Q. Fourteen years?

A. Nearly fifteen years.

Q. Now, Mr. Breedon, have you made an examination of all of the accounts in Norfolk City pertaining to the operations of the Water Department?

A. Yes, sir.

Q. Have you examined the various items showing the amount of receipts from the Water Department?

A. I have.

page 24 } Q. I want you to take first the year 1927, and
I will ask you what was the total amount of water bills or water charges for income in 1927?

A. The total amount of water bills \$838,953.10.

Q. Does that work against the entire amount of receipts that should have been due from the operation of water, had they all been collected?

A. That is right.

Q. During the year 1927, or at the end of the year 1927—do you make an estimate or statement of uncollectable bills?

A. Yes, sir.

Mr. Godwin: I object to an estimate. His books will show.

Mr. Sebrell: In that regard, the fact will be this, which is perfectly apparent: We issue so many hundred thousand dollars worth of bills for water that we have sold; some are paid in 1927 and some in 1926 and some are delinquent, and we cannot tell from the books what bills were collected in 1927 and what in 1928. The amount collected in 1927 will

show, but it would not show the aggregate amount of water for 1927 because there would be some delinquent bills for 1926 collected in 1927, and there would be some bills in 1927 which would not be paid until 1928.

The Court: Your audit shows the coverage of the delinquents?
 page 25 } Mr. Sebrell: It shows it in the succeeding year.
 The Court: Go along.

By Mr. Sebrell:

Q. How much was charged off during that year, supposed to be collected that year?

A. \$3,362.43 was charged off during 1927, which was bills for prior years.

Q. What was the amount at the end of 1927 that was estimated as not being collectable and deducted?

A. \$12,841.85.

Q. Now, as a matter of fact, how much revenue was actually collected in the year 1927?

A. \$831,831.74.

Q. How much during 1927 was collected from the penalties on water bills?

A. \$8,272.16.

Q. How much from fishing?

A. \$5,911.00.

Q. How much from the rent of land?

A. \$675.00.

Q. How much from the rent of meters for fire purposes?

A. \$541.00.

Q. Were there any other receipts from the Water Department that year?

A. That is all the receipts from the Water Department that year.

page 26 } Q. Have you also made an examination of the books in that office to determine what were the expenses of operation of the plant during that year?

A. Yes.

Q. What was the gross amount of operating expense?

A. \$237,149.96.

Q. What was paid as interest on the bonded debt of the water plant?

A. \$454,935.17.

Q. And what was paid into the sinking fund Commissioners that year as an annuity on the water bonds?

A. \$160,618.68.

Q. Did that constitute the entire expense of the operation of the Water Department as your books show?

A. Yes.

Q. What was the result from these figures as to whether it made a profit or a loss?

A. It was a loss—\$11,193.40.

Q. Now, Mr. Breeden, have you made an investigation of the books to see how much of that water was sold to consumers outside of the City of Norfolk?

A. Yes, sir.

Q. In 1927?

A. \$53,060.58.

Q. Now, take the year 1928: What was the gross amount of water sold during that year?

page 27 } A. \$843,490.45.

Q. How much was charged off by estimation for bad bills?

A. \$12,000.

Q. What was the actual receipt of the Water Department that year from water sold?

A. \$818,121.11.

Q. How much was paid for penalties?

A. \$7,345.54.

Q. From fishing?

A. \$3,427.15.

Q. Rent of land?

A. \$4,479.50.

Q. How much of rent of meters for fire purposes?

A. \$541.

Q. Was there any other item of receipt that year?

A. \$737.72 from miscellaneous sales of junk and stuff of that kind.

Q. That was money obtained from the sale of old junk?

A. Yes, sir—broken pipe and old material.

Q. Now, give us the figures for 1929? Suppose you read off the various items. I did not get the expenses?

A. No.

Q. The expenses for 1928? What were the operating expenses?

A. Ordinary \$245,390.89; interest \$463,954.90.

Q. By interest you mean interest on water

page 28 } bonds?
A. Yes, sir. Annuity on water bonds \$164,-
892.46.

Q. The total charges?

A. \$874,238.25.

Q. Taking your estimated collection of bills, how do you stand as to profit and loss?

A. Loss \$26,220.86.

Q. If you took the actual receipts, rather than the receipt of estimated uncollectable bills, how would that have affected the situation?

A. The loss would have been about \$13,000 more.

Q. So that the loss then would have been approximately how much?

A. \$39,000.

Q. What was the amount of water sold to outside consumers in the year 1928?

A. \$59,991.67.

Q. Now, the year 1929; tell us what was the amount from water bills, the gross amount of water sold?

A. \$870,444.44.

Q. How much was estimated to be charged off for bad bills?

A. \$12,000.

Q. How much did you actually receive that year?

A. \$846,741.41.

Q. Will you please just state the other receipts you had that year?

A. Penalties \$2,054.11; fishing \$3,766.10; rent page 29 } of land \$1,479.00; rent of meters for fire purposes \$541.00; sale of old equipment, junk and so forth, \$414.46. Total \$866,699.11.

Q. That represents all the receipts for that year?

A. It does.

Q. What were the expenses that year?

A. Ordinary \$247,107.08; interest on water bonds \$469,003.84; sinking fund annuity \$167,379.10. Total \$883,490.02. A loss for the year of \$16,790.91.

Q. If you take the actual figures rather than the estimated uncollectable bills, the loss would have been what?

A. Approximately \$29,000.

Q. What was the amount of water sold outside of Norfolk City in 1929?

A. \$69,168.76.

Q. Now, take the year 1930?

A. Amount of water sold \$879,391.28.

Q. What was charged off as estimated uncollectable bills?

A. \$12,000.

Q. Leaving a balance of what?

A. \$867,391.28.

Q. What were the actual receipts that year?

A. \$862,950.41.

Q. Practically five thousand less?

A. Practically five thousand less.

Q. What other receipts did you have from the plant that year?

page 30 } A. Penalties \$1,246.00; fishing \$6,217.95; rent of land \$2,600; meters for fire purposes \$541.00. Sale of old equipment and junk \$1,247.31. Total \$879,243.54.

Q. Now, Mr. Breeden, I understand that total is based upon the estimated failure to collect bills?

A. Yes.

Q. If you take the actual receipts, the total would be less than that amount?

A. Yes.

Q. Now, the expenses for that year?

A. Ordinary \$240,936.69; interest on water bonds \$471,758.21; sinking fund annuity \$167,293.26. Total \$879,988.16. A loss for that year \$744.62.

Q. If you calculated the actual receipts rather than your estimated loss of bills, the total loss would have been how much?

A. Approximately \$5,000 more,—\$5,700.

Q. What was the amount of water sold outside of the City in 1930?

A. \$77,641.28.

Q. Now, take the year 1931; the gross amount of water sales?

A. \$878,982.04.

Q. The amount deducted?

A. \$16,000—leaving a total of \$862,982.04.

Q. How much was actually collected that year?

page 31 } A. \$865,626.93.

Q. So the amount collected that year actually was not quite \$3,000?

A. Yes.

Q. State the other items collected that year?

A. Penalties \$1,007.00; fishing \$5,725.08; rent of land \$2,077.82; rent of meters \$529.00; miscellaneous sales \$269.27.

Q. The miscellaneous sales,—that was not of water?

A. No.

Q. What was it?

A. Miscellaneous junk.

Q. The expenses for that year?

A. Ordinary \$244,550.61; interest on water bonds \$477,063.71; sinking fund annuity \$171,265.16. Total \$892,879.48. Loss for the year \$20,289.27.

Q. Now, if you take the actual receipts instead of estimated loss, you would have a little less than that?

A. About \$18,000.

Q. Now, the amount of water sold to consumers outside of the City for 1931?

A. \$79,063.86.

Q. For 1932, we will get the facts. The amount of gross water sold in 1932?

A. \$879,800.07.

Q. How much was estimated as non-collectable page 32 } bills?

A. \$15,000.

Q. What did you actually collect in 1932?

A. \$845,839.99.

Q. Now, state the other items of receipts in 1932?

A. Penalties \$1,266.00; fishing \$3,868.40; rent of land \$1,200; rent of meters for fire purposes \$499.00,—making a total of \$871,633.47.

Q. Now, for that year if you were to take the actual amount collected instead of the estimate, what would be the difference?

A. Between the amount actually collected and the amount estimated to be collected?

Q. Yes.

A. About \$19,000 in round figures.

Q. Now, what were the expenses that year?

A. Ordinary \$200,000.11; interest on water bonds \$449,699.27; sinking fund annuity \$162,894.05. Total \$812,593.43. A profit that year of \$59,040.04.

Q. If you had the actual receipts rather than the estimated receipts, that profit would be how much?

A. Approximately \$40,000.

Q. How much was sold to consumers outside of Norfolk City during 1932?

A. \$80,406.84.

Q. Now, Mr. Breeden, in those figures for the page 33 } various years in your water rent, included in the general total of water rent, was there anything included which represented the interest that the town of Virginia Beach paid Norfolk City on the layout of water mains to that City?

A. \$12,000 for each year is included in those figures.

Q. In other words, you mean the Town of Virginia paid the interest on \$200,000, the cost of laying the water mains from Norfolk to Virginia Beach, and they paid that amount of interest under their contract?

A. That is right.

Q. During what period of time were they to pay that interest on the amount?

Mr. Sebrell: Your Honor, I suppose that will be proved in the contract. I wanted to prove the figures in the water rent

of \$12,000, which the Town of Virginia Beach paid on the installation of the plant.

By Mr. Sebrell:

Q. From your books showing receipts and expenses of the operation of the water plant in Norfolk City, state whether or not in any of the years from 1927, to and including 1931, there was any profit made on that plant?

A. There was none.

Q. Was there a loss each year?

A. A loss each year.

page 34 } Mr. Sebrell: Now, if your Honor please, I want
to file that. You made that statement up from
your books?

Witness: Yes, sir.

Mr. Sebrell: I want to file it as evidence.

Mr. Godwin: That is filed as an exhibit with the bill of particulars.

By Mr. Sebrell:

Q. Mr. Breeden, look at that: Will you put at the top of that the amount actually received. Put it in pencil figures, and then I will have that filed.

A. (Witness does so.)

Mr. Sebrell: Now, if your Honor please, I want to file that. I want to introduce in evidence Exhibit B filed with the bill of particulars of the City of Norfolk in this case.

Mr. Godwin: Do you intend by that, that the note in reference to the Virginia Beach contract is evidence?

Mr. Sebrell: That note simply calls attention to the fact that it was interest. We may have some controversy about it, but it is not material if we do.

By Mr. Sebrell:

Q. Now, Mr. Breeden, I want to ask you this: Does your statement of expenses include any of the general
page 35 } administrative costs of the City of Norfolk outside of the specific Water Department?

A. It does not.

Q. I mean by that, items of character like this, the salary of the Director of Public Works, who has charge of the Water Department?

A. No portion of his salary.

Q. And not for the City Manager, the City Attorney, or

any of the general heads of the Government of which this is a part?

A. No, none of their salaries are a part of these figures.

Q. And these are exclusively the expenditures, and a part of the Water Department office?

A. That is right.

Q. These bills are paid to the City Treasurer; is any of his salary charged to that?

A. No.

Q. These items are items of general government, and if this Water plant, in its financial statement, should be charged with its proportionate part of the general operating expenses of the City Government, that has not been included in the statement?

A. That is right.

page 36 }

CROSS EXAMINATION.

By Mr. Godwin:

Q. Mr. Breeden, this statement that you have introduced here as an exhibit was compiled when?

A. It was compiled during the spring of this year, I think somewhere around in April or May, if I recall.

Q. It was compiled since this suit has been set for trial, or it was anticipated it would be brought?

A. The composite statement was compiled since then, but for each year we have made for our own record this same statement, and this is compiled practically from that and rechecked.

Q. Now, with all the facts and figures before you, why did you estimate these things instead of putting in the exact amounts?

A. At the end of 1927 we had a lot of water bills for that year on hand which were not due until 1928, and we would say at the end of that year how much will be collected, and have to put in an estimated figure.

Q. You knew in 1933 what the exact condition was in 1927, from your figures, did you not?

A. No, for the reason that the water bills as collected are not divided. The cash collected is not divided for the respective years for which the bills are. When the cashier makes a report of the water collected, it may be bills of current and prior years all thrown into one. The separation is only made as to the bills rendered.

Q. You fixed as of 1927 the amount of water contracts as \$838,953.10?

A. That is the total amount of water billed for that year.

page 37 }

Supreme Court of Appeals of Virginia.

Q. You did not include in this statement \$831,831.74, the amount that was actually collected, did you?

A. No. The \$831,000 is the actual amount collected.

Q. You estimated \$12,000 as the amount charged off?

A. Yes.

Q. How much did you actually charge off?

A. \$3,362.43.

Q. In submitting this statement in your bill of particulars, why did you submit \$838,000 as the amount of water rent instead of \$831,000?

A. Because \$838,000 was the actual amount of water billed for that current year.

Q. Why did you then submit \$12,000 as the amount charged off when only \$3,000 was charged off?

A. \$3,000 charged off was bills prior to 1927.

Q. And it had nothing to do with 1927?

A. It had nothing to do with 1927.

Q. If you had only a loss of \$3,000 in prior years, why did you charge \$12,000?

A. That was the amount we estimated at that time would be lost.

page 38 } Q. Who estimated that?

A. The City Auditor.

Q. Why did the City Auditor estimate \$12,000 would be charged off when only \$3,000 had been charged off that year for previous years?

A. Our charge-offs have not been very regular. Some years we will charge off a portion of a year and the next year two years. In 1929 we charged off \$33,724.62.

Q. Where does that show in this statement?

A. That is the actual amount charged off in 1929 of water bills which maybe from 1928 on back.

Q. Can you get a working accurate statement from this statement?

A. This is very accurate, I think. A merchant at the end of the year does not know how much he will charge off. We have followed the same practice.

Q. Don't you know in 1934 exactly how much you did charge off for those years without having to guess about it?

A. We do not divide them by year. We take a whole bunch. After the Water Superintendent has endeavored to collect it, and he finds that he cannot collect it, they are put off for various years.

Q. Have you the figures?

A. For the total amount, but not the separation of the years.

Q. How much did you charge off in 1928?

page 39 } A. None.

Q. You did not charge off anything in 1928?

A. No.

Q. Then, if you did not charge off anything in 1928, in 1928 you had no charge-off of \$12,000?

A. We had an estimate of the 1928 bills we would lose.

Q. When did you do that?

A. At the end of the year.

Q. Is that shown in the annual report?

A. No. The \$12,000 is a part of it. The City sets aside so much as reserve for loss, and the water division sets aside \$12,000, which is a part of the general amount.

Q. If you did not charge a penny off in 1928 in your annual report, this estimated charge-off has been recently made, hasn't it?

A. No; it was was in '28.

Q. Does it show in any of your reports in 1928?

A. The amount in the annual report is the reserve for the City as a whole for taxes and other charges of the City.

Q. You make a different audit of your Water Department every year, don't you?

A. The Certified Public Accountants make an audit a year.

Q. Have you those?

A. That is in the whole report of the City. No specific statement is made of the Water Department. It page 40 } is in the Auditor's financial report with all the City's operations.

Q. Then, as a matter of fact, the figures of the operation of the Water Department in 1928 show nothing was charged off other than an estimate of what might not be collected by you?

A. That is right.

Q. In 1927 what was charged off?

A. \$3,362.43.

Q. In 1929 there was no charge-off?

A. Yes.

Q. How much?

A. \$33,724.62.

Q. That was charged off?

A. That was charged off. You will see the combined amount charged off in 1927 and 1929 will more than equal the amount reserved for the three years.

Q. You charged off \$33,000?

A. In 1929.

By Mr. Sebrell:

Q. When you say you charged that off, who charged it?

A. It was authorized by the City Council by ordinance.

By Mr. Godwin:

Q. In 1930?

A. No amount was actually charged off.

Q. In 1931?

A. \$22,024.22.

page 41 } Q. What was that charged off for—what year?

A. 1930 and prior.

Q. I understand in 1929 you charged off \$29,000?

A. In 1929 it was \$33,000.

Q. You charged off for all prior years?

A. Not all.

Q. What did you charge off in 1932?

A. \$12,235.24 was charged off in 1932.

Q. How much of those delinquent taxes have been collected—I mean those delinquent water bills?

A. None of them. Once they are charged off, they are so old and worked so hard they are seldom collected.

Q. You said \$838,000 was the amount collected—\$831,831.74 was the amount collected in 1927?

A. That is right.

Q. Does that include from every source?

A. That is from the sale of water only.

Q. Does that include for all previous years?

A. Any water that was paid in 1927 for previous years was included in it.

Q. That is the actual gross receipts from water for that year?

A. That is right.

Q. In 1928 it was \$818,000; is that the actual amount?

A. That is right.

Q. And, to understand you, there was only approximately \$3,000 charged off in 1927; none in 1928; in 1929 there was \$33,000 charged off?

A. That is right.

Q. None in 1930?

A. That is right.

Q. And in 1931 there was a charge-off of how much?

A. \$22,024.22.

Q. Now, in these water rents you have here, does that include what you get from the Town of Virginia Beach?

A. Yes.

Q. That includes what they pay you for water?

A. And for the interest on the \$200,000. That was billed through the same source that the water bills were put through and included in these figures.

Q. With reference to Virginia Beach, did you loan them the money to build the line to Virginia Beach?

A. We built the line and they paid the interest on the cost of the line.

Q. On what authority did you all build that line?

Mr. Sebrell: You are asking the Auditor something he can't know.

A. There was a council ordinance there, but I am not familiar with it right now.

By Mr. Godwin:

Q. Then you built a pipe line a distance of approximately twenty miles to Virginia Beach to furnish them
page 43 } water?

A. That is true.

Q. When was that done?

Mr. Sebrell: So far as you know. He is asking a question about the administration of the Government.

A. I don't know.

By Mr. Godwin:

Q. I imagine the receipts on the books will show when you started it?

Mr. Sebrell: We will introduce the contract.

The Court: Unless he happens to know the date.

Witness: I don't know the date.

By Mr. Godwin:

Q. When do your books show you started to collect water bills from the Town of Virginia Beach?

A. I don't know. I couldn't say right now.

Mr. Sebrell The contract was dated the 4th day of February, 1924.

Mr. Godwin: Are you introducing it in evidence?

Mr. Sebrell: I will introduce it in its order and at the proper time.

By Mr. Godwin:

Q. How much water in 1927 was sold to Virginia Beach?

A. \$10,095.71.

Q. And then you charged them, in addition to that, the sum of \$12,000 interest?

A. That is right.

page 44 } Q. Approximately \$22,000 was paid by Virginia Beach?

A. That is right.

Q. Now, your company also furnishes some portion of Norfolk County, does it not?

A. That is right.

Q. How much was sold to Norfolk County that year?

A. \$13,988.21.

Q. And how much to Princess Anne?

A. Princess Anne County—no water was sold to Princess Anne County.

Q. You do not sell any water at all in Princess Anne County?

A. That is included in the Virginia Beach pipe line. All the water on that whole line is included in that one account.

Q. In other words, you all bill Virginia Beach for a certain amount of water, and they sell it to the consumers on the pipe line?

A. They sell it to consumers at Virginia Beach.

Q. Who sells it to the consumers along the pipe line?

A. From Norfolk to Virginia Beach the City sells it, and it is included in the Virginia Beach rental account.

Q. How much did the Town of Virginia Beach pay you for water in 1926?

A. I haven't that figure.

Q. That is a separate account from the account
page 45 } that the consumers in Princess Anne have, is it not?

A. That is right.

Q. And you don't know those?

A. In compiling the figure here we used the full pipe line from Norfolk City to Virginia Beach, and we have the figures for the line as a whole and not the individual consumer.

Q. And those amounts that are furnished to the different parties, the individuals in Princess Anne and the Town of Virginia, Beach, are at different rates, are they not?

A. Yes.

Q. Do you know whether the majority of it was furnished to Virginia Beach, or to people in Princess Anne County?

A. The majority was furnished to Virginia Beach.

Q. How much did you furnish to South Norfolk?

A. South Norfolk \$28,976.66.

Q. Now, who else did you furnish water to other than those?

A. We have Norfolk County and South Norfolk and Virginia Beach pipe lines. They are the only ones we sold water to.

Q. That is the whole territory over there other than is furnished by the City of Portsmouth, isn't it?

A. Yes, sir.

Q. Now, the rates that you charge the people in Norfolk are different from the rates that you charge the people in
in Virginia Beach, are they not?

page 46 } A. They are.

Q. They are different.

Q. People in Virginia Beach pay more for water than they do in Norfolk, don't they?

Mr. Sebrell: He didn't make that statement.

A. We charge the people outside of the City a different rate from what we charge the people in the City. The Town of Virginia Beach has a special contract which is less than the rate charged the people in Norfolk.

By Mr. Godwin:

Q. Now, that same thing is true of the people in Princess Anne, is it not?

A. Yes.

Q. As a matter of fact, Virginia Beach is paying you the interest on your investment, is it not?

A. It is.

Q. They are paying you at the rate of six per cent, are they not?

A. They are.

Q. And that is more than the interest on it, isn't it?

A. Not more than the interest and annuity.

Q. As a matter of fact, the bonds that you sold to build that pipe line are bonds at about four and three-quarters, are they not?

page 47 } A. I could not say offhand what bond issue that \$200,000 is included in.

Q. As a matter of fact, the six per cent interest is supposed to take care of the interest and to pay the indebtedness of \$200,000 in a certain number of years, isn't it?

Mr. Sebrell: We will introduce the contract presently.

By Mr. Godwin:

Q. I suppose, as City Auditor, you are familiar with the contract of the City and the various amounts of money collected by the City, and where those various amounts of money are spent?

A. As a whole, but this contract was made sometime ago,

and I would not be as familiar with it as some of the recent ones.

Q. That is your idea as City Auditor?

A. To be familiar with them, yes.

Q. And it is your idea that Virginia Beach pays, will eventually pay, for the capital outlay and the interest on the investment; isn't that right?

A. No. It is only to cover the interest at six per cent on the \$200,000.

Q. Now, you are getting your interest on the entire outlay of building the pipe line down there, and you are charging the consumers in Princess Anne County more than in Norfolk; that is right, isn't it?

page 48 } A. I wouldn't say for sure. I am not familiar with the exact rates.

Q. Don't you have to have the exact rates to be able to check the water bills?

A. The Water Department has the exact rates, and we take them from their rate sheet.

Q. Is this an exact copy of the rate sheet of the City of Norfolk Water Department?

A. Yes, this is the rate sheet of the Water Department.

Q. Have there been any changes in that?

A. Not to my knowledge.

Q. Has that been the rate sheet since 1927?

A. To the best of my knowledge it is. I do not recall any changes in it.

Q. These notes at the bottom, were they changes made?

A. They are for South Norfolk, which is ten per cent more than the City bills, and the rate for Virginia Beach is according to the contract.

Q. You say South Norfolk pays ten per cent more; do you furnish to the consumer in South Norfolk or to the town?

A. To the consumer.

Q. You furnish to the consumer in Princess Anne?

A. Up to Virginia Beach.

Q. You furnish to the consumer in Norfolk?

A. Yes.

Q. And you furnish under contract to the Town
page 49 } at Virginia Beach?

A. That is right.

Q. Now, the amount that you charge the Town of Virginia Beach is less than you charge the consumer, isn't it, in Princess Anne?

A. Yes.

Q. The amount that you charge the consumer in South Nor-

folk is less than you charge the consumer in Princess Anne County and in Norfolk County, isn't it?

A. I can't answer that. I don't know.

Q. Do you know how much you charge the consumer in South Norfolk?

A. It is ten per cent more than the City rate.

Q. Did you put in the line in the City of South Norfolk?

A. The pipe lines were bought by the City, and the City put in some additional lines.

Q. The City owns them?

A. The City owns them.

Mr. Godwin: I want to put this in (referring to Exhibit A with the bill of particulars.)

By Mr. Godwin:

Q. As a matter of fact, Mr. Breeden, the average consumer in Princess Anne County and Norfolk County pays approximately forty-six per cent more for their water than the people in the City of Norfolk do?

A. I have never figured it out on the percentage page 50 } basis.

Q. Now, I understood you to say that you had the audit, the yearly audit, furnished by the Auditors of the Water Department of the City of Norfolk?

A. For yearly audits made up by the Public Certified Accountant who audited the City books every year.

Q. You have those?

A. Yes. Mr. Sebrell, I think you have those.

Mr. Sebrell: Yes, I have them.

Mr. Godwin: May I see those?

Mr. Sebrell: The originals are here in typewriting. Here is a printed copy, and if you want to see the printed copy you can do it. Show him where the water items are, because there is everything in there together.

By Mr. Godwin:

Q. Now, Mr. Breeden, as Auditor you said that the amount that was collected during the year 1927 was a little over \$831,000?

A. That is right.

Q. That the amount actually collected was a little over \$831,000?

A. That is what you said before. That is right.

Q. That the water rent amounted to \$838,000?

A. That is right.

Q. And you show your total receipts to be \$841,000?

A. That is right.

page 51 } Q. Is that correct?

A. That is receipts for other than water. The \$841,000 is for other than water. It is for penalties, land rent and miscellaneous.

Mr. Sebrell: That is on the basis of the actual receipts before deduction for bad bills for that year.

By Mr. Godwin:

Q. Now, the report of finances—the finance report and statements of the City of Norfolk as compiled September 31, 1927, by the Certified Public Accountant, shows \$854,352.26 was the amount actually set up instead of \$841,000, does it not?

A. The \$841,000 is the estimated amount with the reserve deducted. He has deducted nothing as the reserve for losses. You will note on page 16 he has deducted \$50,000 as a reserve for the losses for the City as a whole, and we have estimated \$12,000 for the Water division.

Q. The estimated revenue for the year 1927 from the Water Department is shown as \$844,039.48, is it not?

A. That is right. That is the estimated amount that was made up in the budget in November, 1926.

Q. When this statement was compiled here, you had access to these figures, did you not?

A. Yes, sir.

Q. Well, are these figures supposed to represent
page 52 } an estimate by you of actual conditions?

A. These figures are an estimate that you will find in here, with the exception of amount estimated as the loss in collections.

Q. Does this audit for the year 1927 show the losses of the Water Department?

A. No. The losses for the Water Department are not shown on the 1927 statement.

Q. Does this audit show the Water Department has lost a cent?

A. It shows partially.

Q. Where does it show it?

A. On page 10. Do you see where the deduction is made in surplus account of \$1,919.16 on page 10?

Q. This is a statement of surplus, isn't it?

Mr. Sebrell: Read it.

Witness: This is a statement of surplus, corporate account.

By Mr. Godwin:

Q. It shows at the end of the fiscal year 1927 there was a surplus in the Water Department account of \$1,919.16. does it not?

A. No. It does not show there was a surplus in the Water Department account. It shows \$1,919.16, which represents an adjustment in some of the water accounts which was charged to the City surplus. The difficulty you are laboring under, I think, is that the City does not have any page 53 } specific water balance sheet. The balance sheet of the Water Department is contained in the City's corporate balance sheet, and the various items of the Water Department are incorporated with the other City's affairs, and this statement represents items which affect water and affect water only, which have been picked up from these reports and checked with the books.

Q. Where in the financial report of the City of Norfolk, as compiled December 31, 1927, does it show that there was any loss in the operation of the Water Department of the City?

A. There is no statement in there that shows that.

Q. And that is a complete audit of the whole City's financial set-up, including the Water Department?

A. Included in the financial set-up.

Q. It shows \$11,000 was lost in 1927—the exhibit which has been filed?

A. That is right.

Q. Has the Water Department any power to borrow money?

A. No. The City as a whole.

Q. They show that they were at a loss of \$26,000 in 1928?

A. That is right.

Q. \$17,000 in 1929?

A. That is right.

Q. 1930 \$744,000 approximately?

A. Yes.

page 54 } Q. In 1931 approximately \$20,000?

A. That is right.

Q. And I understood you to say that these items for fishing are correct?

A. Yes.

Q. The items for rent of land are correct?

A. That is correct.

Q. The items for fire purposes—they represent the correct figures, and so does the sale of old junk?

A. Yes.

Q. Did the City actually pay out \$237,149.96 for ordinary expenses during the year 1927?

A. That was the ordinary expense for that year.

Q. Is that shown in this audit?

A. Yes, in several places, but you will not find that one figure. You will have to go through the whole report.

Q. Did they pay out \$454,935.17 for interest on bonded indebtedness?

A. That was the interest on bonded indebtedness for that year.

Q. For the whole City?

A. Nothing but water bonded indebtedness is included.

Q. And they put actually in bank to the sinking fund of those various bond issues, according to the terms of the bond issue, \$160,618.68?

A. For water bonds.

page 55 } Q. How much money has the City Council appropriated out of the general fund of the taxpayers of the City of Norfolk to the Water Department?

A. They have appropriated all of this money that was set up here as an expense. A part of it was appropriated direct to the Water Department. Some was appropriated to special accounts, which the Water Department used some of it, and the interest on the water bonds is appropriated for bonded indebtedness of the City as a whole, and this portion represents the water portion of the bonded indebtedness, and the same way with the sinking fund. It appropriates the sinking fund as a whole.

Q. That is all the revenue was put in to the City Treasury and they appropriated it out?

A. Yes, and all the expenses of the Water division are in the City's expenses.

Q. It is not segregated or ear-marked at all?

A. Only through the revenue statements.

Q. Does this revenue statement for the year 1927 show any appropriation to the Water Department by the City Council?

A. Yes.

Q. How much?

A. In 1927 the ordinary budget council appropriated \$33,853.54 for collection and superintendence of the water division; \$17,630.00 for water inspection.

page 56 } Q. What page is that?

A. 22. It appropriated for mechanical distribution \$49,787.20.

Q. What page is that?

A. 22. Pumping station \$133,471.46; for fishing \$382.00. In addition to that, there are some smaller appropriations.

scattered throughout the book, which is rather difficult to pick out, but they are in there.

Q. Is that supposed to include all the appropriations from the City Council to the Water Department?

A. That is all the ordinary budget. From time to time there are additional appropriations made by the Council, and they are in various places in this book; but that takes up the bulk of the operation of the water division.

Q. That is the operation?

A. The bulk of the operation. The others are extraordinary items.

Q. And those items represent the items you have \$237,000 for ordinary expenses?

A. \$237,000 represents the actual expenditures of those appropriations and not the appropriations actually expended.

Q. Where are the items in this financial report for the fiscal year ended 1927 in reference to the amount spent for bonded indebtedness of the Water Department?

A. There is a figure in this book showing the total amount of interest spent on bonded indebtedness, but there page 57 } is no figure here which would show the amount spent for water bonds only.

Q. Where is that statement?

Mr. Sebrell: Mr. Godwin, the statement you are reading from is the report of the expert Public Accountant, who is required by our charter to make an independent report of the City's finances. My own department is included in that. The statement you are reading from is the audit made by the general auditor at the end of the year.

By Mr. Godwin:

Q. Go ahead.

A. On page 23. Interest on funded debt, expenditures \$1,835,013.54. Included in that figure is the interest paid on water bonds. That is the interest on the bonded debt of the City as a whole.

Q. Nowhere segregated?

A. Nowhere segregated in this report.

Q. Do you know how much these various bond issues are and what rate of interest they take?

A. Yes, sir.

Q. What are the various bond issues and the rates that they take for water alone?

A. I have a list of the water bonds here totaling \$8,974,771.27. That is composed of numerous bond issues. For in-

stance, there is an appropriation bond dated May page 58 } 1, 1915, maturing in 1945 for \$123,000, of which there is \$11,770 for water purposes. There is another issue of water bonds, same date, of \$75,000, which is all water bonds. There is a refunding issue of June 1, 1915, maturing in 1945, of \$500,000, of which \$18,023.20 is water. Public improvement bond, dated October 1, 1922, maturing in 1947, \$1,172,000, of which \$40,701.75 is water. A refunding issue dated May 1, 1922, due in 1954, for \$792,000, of which \$28,727.80 is water.

Mr. Sebrell: If your Honor please, it is just making up the record. What can be the pertinency of the amount of Norfolk City's bonded indebtedness for street improvements and things of that sort?

Mr. Godwin: I asked the total amount of water debt.

By Mr. Godwin:

Q. Just give the amount of water debts?

A. I gave that at first, \$8,974,771.27.

Q. How much was in the various sinking funds of these various bond issues in 1927?

A. I have not that figure available.

Q. Will you make it up and submit it here?

A. I can do it. The total amount of money applicable to the water bonds as of 1927?

Q. That is right. 1928, 1929, 1930, 1931 and 1932. Now, you are in difference with Mr. Charles H. Bliven, Superintendent of Water Department, in reference to page 59 } whether or not there was a profit made for the year 1927, are you not?

Mr. Sebrell: If your Honor please, there is no statement from Mr. Bliven. If he wants to put Mr. Bliven on the stand, he can do it. He can ask this witness what he knows about it, but he is not responsible for any statement Mr. Bliven may make.

Mr. Godwin: I withdraw the question.

By Mr. Godwin:

Q. In this report of finances, compiled by the Certified Public Accountant, he has submitted Mr. Bliven's statement about that?

Mr. Sebrell: You are mistaken about that. It is a report from the various departments of the Government. The Certified Public Accountant has nothing to do with it.

By Mr. Godwin:

Q. Hasn't Mr. Bliven who is the Superintendent of your Water Department, furnished to the City of Norfolk and incorporated it in that report of the financial condition of the City of Norfolk, a statement showing that the Water Department made a profit for 1927?

A. I have not gone over these reports in the back. In fact, we never pay a great deal of attention to those. We only refer our figures to the report as audited by the Certified Public Accountant. These are reports made page 60 } by the different departments, and we pay no attention to them. The Auditor's report that we use is reflected by our books.

Q. Now, in this report, Mr. Bliven reports \$862,000—

Mr. Sebrell (Interposing): Are you introducing it? I submit that we are really killing time to ask this man about Mr. Bliven's report when he knows nothing about it. It has not been introduced in evidence.

Mr. Godwin: Your Honor, he is the City Auditor; here is a compiled statement of the finance report and statement of the City of Norfolk, Virginia, for the fiscal year ended December 31, 1927. Included in that statement are the statements of the various departments of the City of Norfolk and their operating expenses and revenues. I think that he being the Auditor, that he is the man to testify as to the correctness of these things.

Mr. Sebrell: Those statements are not submitted to him. This is a statement made by the Superintendent of Department of Public Works to the City Manager. None of these books are kept in the Auditor's office, and that is an entirely different statement from the financial statement of the operations of the Water Department.

Mr. Godwin: It seems to me that they never made any particular separate statement of the Water Department's activities, but they have.

page 61 } Mr. Sebrell: Let him reproduce the whole statement for what it is worth. His Honor can then determine it. This is not a jury case.

The Court: As Mr. Sebrell suggests, just consider that statement as filed.

Mr. Godwin: All right.

By Mr. Godwin:

Q. The Superintendent of the Water Department stated that the revenue of the Water Department, represented by bills rendered, amounted to \$862,063.03 for 1927. Now, was

the Superintendent of the Water Department, in 1927, when this report was made, right or wrong?

A. He was wrong. Our books show \$838,953.10.

Q. Doesn't the Superintendent of the Water Department have charge of the contracts, and isn't that where the contracts are made for water rents?

A. What contracts they have are made there, I would say.

Q. He has records of that, and any records gotten by the Auditor's office must be taken from his records?

A. Taken from monthly reports.

Q. That he submits?

A. Yes, that he submits.

Q. And he showed that there was a net revenue that year of \$852,099.23, didn't he?

Mr. Sebrell: The report shows for itself.

page 62 } A. If that is what is there. I have not seen it.

By Mr. Godwin:

Q. And, instead of being an operating cost of \$237,000, as you have set out in this statement which has been recently compiled, his figures show that there was an operating cost of only \$232,000, approximately?

A. His figures are wrong.

Q. They were made in 1927, and the City Council took this and adopted it and had it printed, and have kept it in its files as its correct record, has it not?

A. The City Council accepted the report of the Certified Public Accountant.

Q. The City Council has accepted it and has printed it and has filed it as being the operation of the Water Department and other departments for that year, hasn't it?

A. Yes.

Q. And it showed a net balance in the hands of the Water Department at the end of this year, after paying all expenses, sinking fund, interest and operating cost, of \$4,018.19, didn't it?

A. It shows a net balance?

Q. Yes.

A. The Water Department hasn't any fund. The funds are all in the hands of the Treasurer, so I don't see how he could say there was a net balance when all the funds were in the hands of the Treasurer. They collected the money and turned it over to the Treasurer, and they cannot
page 63 } draw it out without there being an appropriation
and papers drawn, which have to go through the hands of the Water division.

Q. In this report they had not only come out even and made some money, but they reported that if the ordinance had been sustained charging water rents to property owners, they could even reduce the water rent in Norfolk, didn't they?

Mr. Sebrell: The report is in there, and why ask him about it?

Witness: I have not read it.

Mr. Godwin: I want to introduce it in evidence, marked Exhibit B. I want those portions dealing with the Water Department. This is the first time I have seen them. I have asked for them, but have never gotten them. They were put down on the desk, and I haven't had time to examine them thoroughly. I will hold them out and I will have an opportunity to examine them and put in such portions as I think material to the County's interest.

Mr. Sebrell: I want to say, in regard to that statement, that I wrote to Mr. Godwin a long time ago and gave him the information I had, and told him that these reports would be brought to the trial, and if he cared before that time to come to Norfolk that he would have free access to them and that he could inspect any book or record of the City of Norfolk. I do not think that he should say he has just
page 64 } seen them when the doors were wide open for
him to see them, and I do not think that we should
send the books of the City of Norfolk up here.

Mr. Godwin: My idea is that that letter was written to me a short time ago.

Mr. Sebrell: Over a week ago.

Mr. Godwin: And I asked for this information when the bill of particulars was requested.

Mr. Sebrell: Do you think that it is my business to come and prove to you a thing and not to the court? You have no right to look at my papers until we come into court.

The Court: Get along with the case.

Mr. Godwin: I will withdraw this until I can examine it with the court's permission and put in such portions of this report as I think material to the County's case. I do not want to unnecessarily burden the record.

The Court: Have you any other questions to ask Mr. Breden?

Mr. Godwin: Yes, sir.

The Court: You are apparently in no position to ask questions from these books, and I imagine that he is not in position to answer from them.

Mr. Godwin: If these are records complied by the City of Norfolk; he is the Auditor of the City of Norfolk page 65 } and the representative of that government, and I think I can examine him about them.

The Court: Yes, you can examine him about them, but the Auditor says that he doesn't know anything about the correctness of the water reports made to the City Council, and if he doesn't know, what is the use of asking him about them? Ask him something that he does know.

Mr. Sebrell: It is a question of getting at the facts. The Auditor keeps all books of the City of Norfolk. He hasn't anything to do with any memorandum kept by Mr. Bliven. The Water Department keeps no books, and the entire audit and the entire financial statement of the City of Norfolk is kept in the City Auditor's office. Here are reports made by the Director of the Water Department to the City Manager. It happens to be bound in the same volume, but the report of the Certified Public Accountant, which we brought up typewritten and signed by the Certified Public Accountant, does not contain all that stuff; but this shows the finances of the different departments, including the Water Department. I will show by the witness that the Auditor's Department and his department correspond in every respect. Those statements that he makes do not go to the Auditor; page 66 } they are reports.

Mr. Godwin: Your Honor, I will not go on with this, but I will look through them, and, if I find anything, I will ask the court to recall the witness.

By Mr. Godwin:

Q. Now, I understand that in 1927 you paid out \$450,000 approximately for interest and sinking fund?

A. Interest on water bonds.

Q. That increased to \$463,000 in 1928; why?

A. An additional bond issue was made during that period.

Q. And it increased to \$469,000 in 1929?

A. There was a further issue.

Q. And it went to \$471,000 in 1930?

A. Yes.

Q. Those bond issues were for additional improvements, were they not?

A. That is right.

Q. And there were additional improvements in 1931?

A. That is right.

Q. Now, in 1932, the interest on the bonded indebtedness dropped from \$477,000 down to \$449,000?

A. That is right.

Q. On what account?

A. There was a revision on some of the bonds in the sinking fund, the annuity rate, and cancellation of some of the bonds.

Q. How many bonds did you pay off then?

page 67 } A. Something like \$2,800,000 altogether. They were not all water bonds. \$2,800,000 in the general bonded indebtedness of the City. Just what number were water bonds I cannot say. The books show, but I do not recall the figure.

Q. Will you submit the figures in evidence—the amount of water bonds that have been paid off since 1927?

A. (Witness makes memorandum.)

Q. Now, in addition to furnishing the various other places outside of the City of Norfolk water, the City of Norfolk has been leasing its property, has it not?

Mr. Sebrell: That is a question which this witness would not know.

Mr. Godwin: I imagine that he gets rent from it.

The Court: If he knows, he can say, but if he doesn't know he cannot say.

Mr. Sebrell: The term lease makes a legal question.

By Mr. Godwin:

Q. It has been renting its land?

A. Surplus land.

Q. And it has been collecting from \$3,000 to \$6,000 a year?

A. That is right.

Q. In addition to that, it has been running the business of fishing in its properties?

A. Fishing in the city lakes.

page 68 } Q. On which it has been collecting anywhere from \$3,500 to \$6,000 a year?

A. Something like that.

Q. How do you account for the increase in water sold to consumers outside between 1927 and 1932?

A. I suppose the increase is due to the number of people who moved in that territory. I made no survey of it, but I imagine it would be the increase in the number of people. More houses are being built.

Q. You don't know how much of these delinquent water bills was charged to consumers outside of the area, do you?

A. No.

Q. Is there anywhere you can get those figures available?

A. It would be a right difficult job.

Q. Is there any way to segregate those various consumers?

A. The accounts in the water office, the accounts receivable, would show that.

Q. The monthly reports would show it?

A. No.

Q. What does show it?

A. The accounts receivable ledger of the water division. The system provides in this manner a sheet with fifty numbers on it and each water taker is given a number, and those numbers follow the course of the street, and if a street is in the city and runs all the way out into the county, these numbers follow along on the book, and the county
page 69 } takers and the city takers are all on these books.

Mr. Bliven could really give you an idea of that better than I could because he is more familiar with it than I.

Q. And, if I understand the method in which you all do the bookkeeping for this particular department, it is that the office of Superintendent of water contains all of the records concerning the Water Department?

A. Concerning individual accounts.

Q. Who collects the money?

A. The cashier collects it.

Q. They then make up their report and submit it monthly to the City?

A. Daily report of the cash collections.

Q. And then you have a monthly report?

A. We make a summary of the daily report.

Q. And then you have the yearly reports?

A. The yearly reports show in the finance report,—that is, those audited by the Auditor. We pay no attention to those reports.

Q. Does this report of 1927 show the loss of \$11,193.40 that you have set out in this report?

A. It is not shown specifically in that report.

Q. And that same thing is true of all these?

A. All of them.

Q. And these were compiled by the City Public Accountant?

A. The first section.

page 70 } Q. The figures?

A. The figures in the first section except the reports of the individual department.

Q. And at the end of these respective years, 1927, 1928, 1929, 1930, 1931 and 1932?

A. Yes.

RE-DIRECT EXAMINATION.

By Mr. Sebrell:

Q. He asked you whether the profit and loss is shown in the Auditor's report, to which he has just referred; does this containing the Auditor's report show the gross amount received from water rent and from the Water Department?

A. It shows the gross amount.

Q. Does it show the amount of expense?

A. Yes.

Q. So if you will deduct the amount that he shows for expense from the amount of gross receipts, you get what?

A. This figure here.

Q. Have you compared your figures with the report as made by the Auditor?

A. I have.

Q. Do they differ in any particular?

A. No. They are the same.

Q. You then can state that the figures which you page 71 } have submitted to the court in your report is in absolute accord with the statements made by the General Auditor when he audited the books of the City at the end of each year?

A. That is right.

Q. Mr. Godwin, with his usual astuteness and ingenuity tried to make it appear that there had been no profit and loss shown in this book because you cannot point out exactly the \$11,000; isn't that brought about by the difference in the uncollected bills?

A. Yes, because there is no reserve in there.

Q. In other words, the Auditor's report does not show any deduction specifically for unpaid bills?

A. That is right.

Q. The Auditor's report gives the same total of water for which bills were made out, whether collectible or not?

A. That is right.

Q. The difference between your report and the Auditor's report would be the fact that you have estimated that in 1927 \$12,000 of those bills were not collectible, and, in fact, would not be received?

A. That is right.

Q. And so on with regard to the other reports?

A. Yes.

Q. But as to the amount of revenue received and as to the amount of expenses, I understand you to say to the court that the Auditor's report and your report cor- page 72 } respond exactly?

A. That is right.

Q. Now, in regard to the loss, I understood you to say just now, and I want to know if I am correct in it, that while the Auditor did not undertake to make any specific audit of any particular department of the Government, including the Water Department, I understood you to say that he did put down a general deduction for the entire City government, which included the Water Department?

A. That is right.

Q. So while the probable loss of \$12,000 is not specifically put down to the Water Department, that is included in a general list that he puts out of the entire City's bills collected?

A. That is right.

Q. And it appears in another place in the audit. Now, Mr. Breeden, I forgot to ask you when I had you on direct examination about these charge-offs. I think you did answer in regard to the question of the court. You have stated that in 1934 \$22,000 was charged off?

A. 1931, wasn't it?

Q. 1931. 1931 was charged off for what year, do you remember?

A. In 1931 \$22,024.22 was charged off for years 1930 and prior.

Q. That was '31?

A. Yes. I have made no statement in regard page 73 } to 1934.

Q. That was charged off. They charge off bills when they are how old?

A. They generally charge them off now when they are two years.

Q. What do you mean by charging off if the Council gives authority by ordinance?

A. They are charged off and reserved with that set-up.

Q. That is not done annually?

A. It is done spasmodically. It sometimes goes two or three years, but there is no degree of regularity about it.

Q. Have you figured to see what is the difference between your estimated loss of bills and that which has been actually charged off during these years by the Council?

A. No, I don't think I have figured that, but it can be done in a short while, though. During this period in question, from 1927 to 1932, inclusive, \$71,346.51 bills have been charged off. During the same time there is estimated to be charged off \$79,841.85, making a difference of \$8,477.34.

Q. When was the last charge-off you have in your estimation?

A. The last charge-off is 1932, which was probably made during the first part of the year and does not include the 1932 or 1931 bills.

Q. So the charge-off you have goes to 1930?

page 74 } A. Yes.

Q. And amounts to more than you have during the whole six years?

A. Yes.

Q. Let us see if we can make that plain to the court: You charged off how much actually?

A. \$71,346.51.

Q. That was for what years?

A. Prior to 1931.

Q. 1930 inclusive?

A. Yes.

Q. You have estimated for 1927, 1928, 1929 and 1930 \$36,-
012. What is the total you estimated for these years?

A. What years?

Q. '27, '28, '29 and '30—the years charged off?

A. \$48,841.85. We actually charged off \$71,346.51.

Q. What is the difference?

A. \$22,504.63.

Q. So, as a matter of fact, during the years 1927, '28, '29 and '30, you found it necessary to charge off \$22,000 more than you had estimated would be the loss in bills that year?

A. That is right.

Q. So, instead of making the loss less it would make the loss even greater?

A. That is correct.

page 75 } Q. I want to illustrate some of this: When you get to the Auditor's report of the water rent receipts, where do you find that in the Auditor's report?

A. Do you want cash receipts for water?

Q. Yes.

A. Page 18.

Q. I happen to have 29, and let's go through it.

A. Page 18.

Q. I want you to get your report for 1929, and I am going to read you what the Certified Public Accountant gives as the figures, and I want you to compare it with this report as given to the court, and see whether they correspond. 1929 water sold \$870,444.44; penalties \$2,054.11?

A. That is right.

Q. Meter rent fire purposes \$541.00?

A. That is right.

Q. Fishing permits and privileges \$3,766.10?

A. That is right.

Q. Rent of surplus land \$1,479.00?

A. That is right.

Q. Sale of old junk \$414.46?

A. That checks exactly.

Q. Have you examined the other reports during the other years and found that they correspond exactly with your figures, as did the other years I have just called page 76 } attention to?

A. I have.

Q. Does the same thing show with regard to the disbursements?

A. The expenditures.

Q. I mean expenditures?

A. Yes.

Q. Now, with regard to Mr. Bliven's report, which you have not seen, do they make any annual report for the Water Department to the Auditing Department?

A. No.

Q. Who keeps the books for the Water Department?

A. All the books are kept in the Auditor's office—all the control books.

Q. How are your books kept in the Auditor's office from the receipts of the Department of Water?

A. A daily report of cash received is made at the end of the month. A summary is made of that report, which is checked with the money which the Water Department has deposited in bank, and it shows in the Treasury Department. The report on one deposit slip comes to the Auditor's office. A deposit slip and report go to the Treasurer's office, and the Treasurer records the amount of deposit slip as cash received, and at the end of the month we make a summary and check it with the Treasurer's report.

Q. That report is checked daily with whom?

page 77 } A. The cashier of the water division.

Q. State whether or not it is a fact that a great many of the expenses and bills paid on account of the Water Department never go through the hands of the Superintendent of the Water Department, and do not get in his charge?

A. That is true.

Q. Would any report that Mr. Bliven, Superintendent of the Water Department, might make of his department actually reflect the amount paid by the City Government?

A. These items which go through the Auditor would not go through his office.

Q. He has a record of what he does in his own department?

A. Yes.

Q. Is there any bookkeeping kept in the Water Department itself?

A. Nothing but memoranda that they keep for their own use.

Q. But the regular books of the City and the items of the City's finances, are those in the Auditor's office?

A. Yes.

Q. And if there is any statement in your report by any person employed in the Water Department as to the total and net receipts and expenditures, if they are in conflict with that statement, they are incorrect?

A. They are.

page 78 } RE-CROSS EXAMINATION.

By Mr. Godwin:

Q. Mr. Breeden, then you mean to say that the reports, if any, made by Mr. Bliven, are contrary to what you testify, they are wholly incorrect?

A. They are incorrect so far as the books are concerned.

Q. Where are the books that you took your figures from?

A. Over there.

Mr. Sebrell: All in court.

By Mr. Godwin:

Q. And there are no records at all showing the financial standing of the Water Department in the Superintendent's office?

A. None I know of.

Q. When you have an audit made of his office, where do you go for the records?

A. The Auditor takes the control account from our records and checks the outstanding bills by his accounts receivable.

Q. Where did the Certified Public Accountant get his figures from?

A. From those books.

Q. And if the Certified Public Accountant's statement is different from yours, his is incorrect, is it?

Mr. Sebrell: If your Honor please, the evidence in this court is that they tally in every respect and there
page 79 } is no difference.

Mr. Godwin: I will withdraw the question.

By Mr. Godwin:

Q. I want to ask you three questions so we can be definitely

clear on what they mean: What does estimated revenue mean?

A. Estimated revenue is the estimated amount that *he* is expected to be collected, as set up in the budget.

Q. What does over-estimated revenue mean?

A. Over-estimated revenue, as shown in that report, is where the amount estimated exceeded the amount that was actually billed.

Q. What does under-estimated revenue mean?

A. It means the reverse.

Q. What does actual revenue mean?

A. That is the actual amount billed.

Q. That was taken in?

A. That was billed.

Q. I understood you to say that that is what estimated was?

A. Estimated is the amount estimated to be billed. That is the amount estimated that will come in.

Q. Now, as a matter of fact, your Public Accountant, or your Certified Public Accountant, set out in his figures here that the actual revenue for the year 1927 was \$844,-page 80 } 911.52, and it was estimated as \$844,039; is that right? You have charged \$12,000 off the actual revenue that they took in, haven't you?

A. The actual revenue does not mean actual collected. In other words, the City considers water billed as a revenue.

Q. And this audit was made at the end of the year showing the actual revenue that was taken in?

A. Not taken in but revenue billed. The receipts show the amount taken in. The revenue is not a receipt.

Q. Where is that shown in here?

Mr. Sebrell: Where is what shown, Mr. Godwin?

Witness: Page 18—at the top of page 19.

By Mr. Godwin:

Q. That goes to show that the whole thing amounted to \$871,402, doesn't it?

A. That is my error there. You want 1928—you want 1927, don't you?

Q. Yes.

A. It is still on page 19, but in the 1927, however. It is \$871,402.64. That is the amount of cash collected applicable to water revenues.

Q. That was the amount of cash collected applicable to water revenue?

A. To water revenue and miscellaneous items.

Q. And instead of being actually collected \$426,000 that year, your Certified Public Accountant, in his report to the City Council, showed you collected \$871,402.64, doesn't he?

A. He showed \$871,402.64. The top item of \$831,831.74 is the figure I have used which represents water rents.

Q. What page is that?

A. 19.

Q. There are other figures you have not put in this?

A. No, because we are using a revenue and expense and not cash receipt and disbursement system.

Q. You have certainly charged every expense in the operation?

A. Yes.

Q. And you certainly give us credit for every receipt you took in?

A. I have given credit for every receipt we anticipated.

Q. You have not given credit for \$18,317.40, installing taps and meters?

A. That is not considered in this report. That is a trust fund for these taps and meters. People put up so much money for it. The taps are installed, and if they put in more than they cost, they get it back.

Q. That is shown in your department?

A. Not in these figures here. It is not shown in these expense figures.

Q. Do you mean to say that in these expense figures, if a man was given back a certain amount that he did not use in water, that it was not shown anywhere in these figures?

A. It is not shown as a part of the operation of the Water Department. It is considered as a part of the operation of the City, and is not contained in any of the water statements.

Q. Then the City did not take in \$871,000, as the Auditor shows?

A. The City did not take in \$871,000 that would be applicable to this statement as made here.

Q. Is there any question about these figures being correct as made by the Certified Public Accountant?

A. There is no question about it at all.

Q. In making up this expense of \$273,000, for instance, in the year 1927, what does that include?

A. How much detail do you want that answer in? It includes all the operations of the Water division, collection and superintendence, water inspection, mechanical distribu-

tion, pumping station, fishing expense and some extraordinary expenses.

Q. What are they?

A. We have a system if the Bureau or Department desires more expense, the Council makes an additional appropriation to take care of it, and it is not an original budget. That year they bought some equipment out of that account. Insurance and items of that kind what it is made of. We have full detail of that. It is salary and coal.

page 83 } Q. It includes all repairs?

Mr. Sebrell: He has not said that.

Mr. Godwin: I am asking that.

Mr. Sebrell: You are making the statement.

By Mr. Godwin:

Q. In other words, if you break down machinery, it takes care of it?

A. Yes.

Q. That is the whole operating cost?

A. Yes.

Q. It takes care of all expense you have bonded indebtedness for?

A. No capital expenditure is included in this.

Q. That is included in the bonds?

A. That is included in the bond issue.

Q. Who was the Certified Public Accountant who made up the audit?

A. I couldn't tell you, but it shows in the front. It is a letter of transmittal.

page 84 }

W. P. HILTON,

a witness on behalf of the City of Norfolk, being duly sworn, testified as follows:

Examined by Mr. Sebrell:

Q. Mr. Hilton, you are W. P. Hilton?

A. Yes, sir.

Q. And where do you live?

A. Norfolk.

Q. And what is your business?

A. Certified Public Accountant.

Q. How long have you been engaged in that business?

A. Since 1910.

Q. What position did you recently occupy with the City of Norfolk?

A. Director of Finance and City Auditor.

Q. And during what period of time?

A. From January 1, 1933, to August 1, 1934.

Q. Mr. Hilton, were you City Auditor at the time Mr. Breeden referred to, when this statement that he has testified from was made, in evidence, which you have before you?

A. Yes, sir.

Q. Was that statement made up by you and Mr. Breeden in collaboration together?

A. Yes, sir.

Q. Are you prepared to testify as to its correctness?

A. Yes, sir.

Q. Will you please tell the court whether the page 85 } figures shown on Exhibit 2 filed with the bill of particulars in this case, and which has just been introduced in evidence, are correct figures and show the financial operations of the Water Department for the years stated therein?

A. They are. I made it, and they are in agreement with the City books and also the report of the Certified Public Accountant for those years.

Q. Did you examine also the reports of the Certified Public Accountant for those years?

A. Yes.

Q. Do the reports of the Certified Public Accountant and the reports which you made and the evidence which you give here today correspond?

A. Yes.

Q. Some question has been raised about some statement that is made by some superintendent of another department; where are the books of the Water Department of the City of Norfolk kept?

A. In the City Auditor's Department.

Q. Are they kept in any other place?

A. No.

Q. So the only accurate and correct statements are in the Auditor's office?

A. Yes.

Q. Are these figures here taken from the books?

A. Yes.

page 86 } Q. And the sum total you have got you can testify to the court will be the accurate items on the original books in the office of the Auditor of the City of Norfolk?

A. Yes.

Q. I want to ask you then, Mr. Hilton, in the year 1927 did the City of Norfolk made any profit out of the operation of its water plant?

A. It did not.

Q. On the contrary, what was the result?

A. The loss was \$11,193.40.

Q. Did it make any profit in 1928?

A. No, sir.

Q. What was the loss that year?

A. \$26,220.86.

Q. How about 1929?

A. A loss of \$16,790.91.

Q. And how about 1930?

A. A loss of \$744.62.

Q. How about 1931?

A. A loss of \$20,289.27.

Q. And 1932?

A. A profit of \$59,040.04.

Q. Now, Mr. Hilton, you are not connected with the City Government now, are you?

A. No.

Q. You have gone back into your business as a page 87 } private Certified Public Accountant?

A. Yes.

Q. Is there any question in the world about the correctness of those figures?

A. No, sir.

Q. Mr. Hilton, those figures, are they the figures that were computed and made—I don't mean put on that piece of paper, but are they the figures which were made up each year before this water question came up?

A. Yes, sir.

Q. And they are the only statements made by the City Auditor and by the Certified Public Accountant at the end of each year?

A. They conform absolutely to the accounting of the respective years.

Q. In the accounting system of the City of Norfolk, is there any separate account kept with the Water Department, or is it included in the whole?

A. It is included in the receipts and expenditures of the entire City.

Q. When you make out the audit of the Water Department, then you have to go through the general audit and get out the items as pertain to the Water Department?

A. Yes, but in the account there are certain parts which show it.

Q. And one shows the expenses of the Water De-
page 88 } partment?

A. Yes.

Q. And the other shows the receipts of the Water Department?

A. Yes, the whole detail.

Q. Now, Mr. Hilton, you have been a Certified Public Accountant a great many years?

A. Yes.

Q. In making out a financial statement, what is the practice about including in the expense of a department, or a corporation, the general overhead?

A. General overhead expenses are pro-rated to all the departments included in those expenses,—that is, in order to determine the profit and loss from any one department.

Q. To illustrate, the salary of Norfolk City Manager, who has general supervision over the Water Department, his salary would be apportioned among the various departments?

A. Yes, it should be if there is an exact accounting.

Q. Were any of those items of general expense included in this statement?

A. No, there were none.

Q. So this loss resulted from the actual operation of the Water Department itself?

A. Prime operation.

page 89 }

CROSS EXAMINATION.

By Mr. Godwin:

Q. Mr. Hilton, is this audit correct?

A. Yes, so far as I know.

Q. This audit for 1927?

A. I don't know anything about 1927, but I would say it is correct.

Q. Did you investigate the records from these reports?

A. This report agrees with that report.

Q. What does actual revenue mean?

A. Actual revenue means full revenue, whether collected or not.

Q. Of course cash receipts means the amount taken in, doesn't it?

A. Yes.

Q. In 1927 you have water rents at \$838,000, approximately, in this statement?

A. Yes.

Q. In the statement of the Certified Public Accountant that examined the books, he has it at \$826,000; now, who is right?

A. He has what, actual?

Q. Actual revenue of \$826,000?

A. Are you referring to what?

Q. On page 15 of the audit for the year 1927 you will find under the Division of Water, in the first column, page 90 } \$826,196. That is for 1926, is it not?

A. That is 1926.

Q. Now, you will find \$838,953.10 for the year 1927?

A. That is correct, and agrees with this report.

Q. Now, that, you say, is not actual revenue that you took in?

A. Not in money, no. That represents the gross billing—the charges that the Water Department made against customers for that year, whether collected or not.

Q. Was it charged off that year?

A. No; it was charged as accounts receivable. It represented revenues of the City, just as you charge ten customers for ten suits of clothes; you may collect for only nine suits by the end of the year, but the books show you had ten.

Q. And you carried that as an asset, as a charge against these people?

A. Yes.

Q. And you so fixed it in your report?

A. Yes, as representing accounts receivable in the balance sheet.

Q. You say you actually took in \$831,000?

A. Yes, \$831,000, \$831,831.74.

Q. Now, the Certified Public Accountant shows you took in \$871,402.64?

A. That is on page 19. The actual collections page 91 } from water rents were \$831,831.74.

Q. That was not shown at all on this statement you originally made, was it, that you filed here?

Mr. Sebrell: He has not filed any statement, but I filed it.

By Mr. Godwin:

Q. Didn't you make it in collaboration with the Auditor?

A. Yes, we made it, but if we had made a statement on a cash receipt and disbursement basis, this loss would be increased I don't know how much.

Q. Why didn't you make it on that basis?

A. Because it is not usual in general accounting. You take in accrued receipts and accrued expenses, whether paid or not.

Q. The next item is what?

A. Penalty.

Q. What did you make the penalty in your report to be?

A. \$8,272.16.

Q. Does that tally with this report of the Certified Public Accountant?

A. It has a minor disagreement in that.

Q. It is a substantial disagreement, isn't it—over \$400?

A. This is cash.

Q. Then one of these statements is wrong, isn't it?

A. No.

page 92 } Q. How do you account for that?

A. This one is made up on the actual revenue for charges for the period. That is covered on page 14 of the Auditor's report.

Q. What was that—anticipated penalties, or what?

A. Penalties charged during that period.

Q. Anticipated?

A. No; they are actual, because penalties are only set up as charged.

Q. They cannot be actual if the actual receipts from penalties amount to \$8,615, could they?

A. Certainly it can because the penalty is not added then; you may collect it two years from then.

Q. Doesn't this report show in 1927 you actually collected \$8,715 in water penalties, on page 19?

A. Yes, but that does not refer to the year 1927 only. A part of that would accrue to the business of 1926.

Q. Have you segregated those penalties?

A. No; we have taken it from the books of the City.

Q. In other words, what you have done is to make up these statements from these books?

A. No. We made this statement from the books. This statement is made direct from that. That report is in agreement with those books, but this statement is not made from the Auditor's report.

page 93 } Q. Well, now, you say actual revenue is anticipated revenue, don't you?

A. Revenue for that year, yes.

Q. That is revenue you have charged?

A. Actually charged and billed. It has no relation to cash receipts.

Q. As a matter of fact, it doesn't make any difference what year it was taken from, the City of Norfolk took in \$8,615.72 in penalties in 1927, didn't it?

A. That is undoubtedly correct.

Q. It took in \$5,911.00 in rent of land, didn't it?

A. No; fishing permits.

Q. That is right, fishing permits. In rent of land, how much did it take in?

A. \$1,412.86.

Q. And over on the page you set up \$6,811?

A. \$675.00. That comes from collecting similar bills for prior years.

Q. You have rent of meters for fire purposes—\$675, when rent of meters actually paid you that year was \$571.00; is that right?

A. No; we charged that year \$541.00; we collected \$571.00.

Q. Why the difference between your report and this report?

A. Because you are referring in the Auditor's page 94 } report to page 19, which represents cash receipts of not only charges for operation for the year 1927 but money received from the operation of any year prior to 1927. This statement of operations is nothing but the revenue or earning, gross business, of the Water Department for the year 1927 compared with the expenses of that year. These excess collections you see reported here by the Auditor represent operations of prior years that have already been taken into account. You cannot take it into account twice.

Q. You have an item "Miscellaneous sales and service" of \$4,742.00 that you have taken in and have not accounted for at all, haven't you?

A. No, not in this accounting, but this accounting is complete as to all its revenue.

Q. Why didn't you put it in there? The Certified Public Accountant put it in there as money actually taken in?

A. It is a different classification. The Certified Public Accountant may classify it one way and I would classify it another.

Q. That \$4,000 is not accounted for in your statement in the receipts of the Water Department?

A. We are not accounting for receipts but accounting for revenue.

Q. I am asking you do you show in your report that \$4,000?

A. No, and we do not have to because if you go page 95 } to page 14 of the Auditor's report, which covers revenue for that year, you do not see the \$4,000 put there by him.

Q. I am not asking you what your expected revenues were, but I am asking you what you actually took in?

A. We took in that amount of money.

Q. Do you deny the fact that this \$4,292 was not taken in as the result of the Water Department activities in the City of Norfolk for 1927?

A. It might not have had anything to do with the activities of the Department for that year. I would say it did not have because we would have taken it into this account if it had.

Q. Do you know why it is set out under the Division of Water as a part of gross receipts?

A. No.

Q. Then this is wrong?

A. I cannot anticipate the Certified Public Accountant's idea when he certifies his report.

Q. Then is that wrong?

A. I would not say whether it is wrong or right. It is not revenue of that year.

Mr. Sebrell: The statement is not cash received for 1927 but for some year, and, therefore, it did not appear in the statement of 1927 as a part of the revenue received from the Water Department in that year. It seems to me page 96 } that the examination is going into whether it was taken in in 1926, and whether it is not taken in in 1927 is not wrong.

Mr. Godwin: We are trying to find out what the City of Norfolk took in and what they spent that year, and they have certified that they took in from miscellaneous sales and service that year the sum of \$4,742.92, which is not accounted for in this statement that these gentlemen have made.

Mr. Sebrell: Suppose that statement was water bills that were due the previous year, do you think that that ought to be included?

Mr. Godwin: I am asking him.

Mr. Sebrell: I know you are asking him, but I am asking you. Do you think what he received for bills in 1926 ought to be included in 1927? Is that what you are asking him?

Witness: They are not receipts for that year. They were not revenue for that year.

By Mr. Godwin:

Q. What are they then?

A. I cannot tell you the details of what enter into it. I can tell you when we made the statement if it had been revenue for 1927 it would have been incorporated in one of these separate items. The years 1927 to 1932, whether paid or not, are complete in this statement.

page 97 } Q. In which statement?

A. This statement furnished as Exhibit 2.

Q. And that is based on actual revenue which you say is anticipated revenue and not what you took in at all?

A. Cash receipts and disbursements haven't a thing to do with the statement of operation.

Q. What does actual revenue mean?

A. It means what you sell or bill out to a customer.

Q. What you bill out to a customer?

A. Yes, and that is what the operations are based on.

Q. And in this year these items on page 14 were all you billed?

A. Yes, that is the revenue of that year.

Q. Though you took in \$871,402.64?

A. Yes. \$871,000 hasn't a thing to do with that.

Q. Did you make a complete audit of the books of the Water Department when you made up this statement?

A. No. We took the City's records for it.

Q. Didn't you make an audit of the City's records to get these results?

A. We did not take all the details, items and vouchers. That work was done in the Auditor's office.

Q. What participation did you have in this?

A. Nothing more than compiling and proving this statement against the books of accounts.

Q. Did you do that work?

page 98 } A. Yes.

Q. Did you make up a general statement other than this balance sheet?

A. This is not a balance sheet but an operating sheet.

Q. Have you made any extra copies of this?

A. Of what?

Q. Of the work you did in compiling this operating sheet?

A. No. We haven't those records with us.

RE-DIRECT EXAMINATION.

By Mr. Sebrell:

Q. I do understand you, yourself, made an examination of the books and the only books kept in Norfolk City in regard to expenses and receipts of the Water Department, and that this statement was made up in accordance with them?

A. Yes, and all the details backing this are in those books.

Q. Do I understand also the difference Mr. Godwin finds in the Auditor's report of cash receipts of Norfolk City, that those cash receipts refer to the cash taken in each year, and do not reflect exactly the conditions as taken in for water for this year 1927?

A. Yes.

page 99 } RE-CROSS EXAMINATION.

By Mr. Godwin:

Q. I understand you to say that the City of Norfolk did not make a profit for either of the years 1927, '28, '29, '30 and '31?

A. It did not make a profit.

Q. If the City of Norfolk, by putting into its sinking fund, \$160,000 in 1927, and showing, after that had been placed in the sinking fund, a loss of \$11,000, do you mean to say that they have not made a profit?

A. They have not.

Q. Then you do not regard a sinking fund instalment as a profit?

A. No.

Q. You know the Court of Appeals does?

Mr. Sebrell: If he knows it, he knows more than I do. I claim to be a poor lawyer, and he does not claim to be a lawyer at all.

By Mr. Godwin:

Q. Don't you know that it has been so held that deposits for a sinking fund are regarded—

Mr. Sebrell: If your Honor please, I object.

Witness: No.

Q. You say it has not made a profit because you do not consider the sinking fund instalment to retire these
page 100 } bonds a profit?

A. No. It stands in this statement as the equivalent of depreciation.

At 1:15 the court took a recess for lunch until 2:15.

AFTERNOON SESSION.

Suffolk, Virginia, October 29, 1934

The court met at the expiration of the recess.

Present: Same parties, as heretofore noted.

W. P. HILTON,
a witness on behalf of the City of Norfolk, recalled, testified as follows:

Examined by Mr. Sebrell:

Q. Mr. Hilton, please tell us what is the book value of Norfolk City Water Works?

A. In 1927 it was \$11,569,251.52.

Q. Go on with the other years?

A. In 1928 it was \$11,631,365.35; in 1929 it was \$11,721,-
107.10; in 1930 it was \$11,810,095.92; in 1931 it
page 101 } was \$11,861,590.04; in 1932 it was \$11,889,689.53.

Q. In your statement showing the financial operations of the Water Department, its revenues and its expenses, have you taken into account anything for depreciation?

A. No.

Q. Has anything been charged off for depreciation?

A. No, other than interpreting the sinking fund annuity as the reasonable equivalent of depreciation.

Q. So whatever depreciation, there has been an annuity each year in the sinking fund to cover depreciation?

A. Yes.

CROSS EXAMINATION.

By Mr. Godwin:

Q. Mr. Hilton, who made up the book value of the Water Department? Did you help make it up?

A. It was compiled from the books of the City and the plant account.

Q. You made it up and went over every piece of property that they had?

A. Oh, no.

Q. Well, how did you make it up?

A. Simply an accounting from the general books of the City.

Q. Did you make it up yourself?

A. No, because I was not there—

Q. Do you know what the value of that plant
page 102 } is?

A. No more than what the books show.

Q. What books?

A. The general books of the city.

Q. Do you mean these audits?

A. Either those audits or the general books from which the audit is made.

Q. Do you know how it is segregated?

A. Do you mean the account?

Q. The book value?

A. What we add to it from year to year.

Q. Do you know what portion of it is in this county or what portion is in Princess Anne?

A. No, I do not.

Q. What you testify to is the book value?

A. Yes.

Q. Without any knowledge of the property at all?

A. That is right.

Q. You say the sinking fund takes care of the depreciation?

A. It is the equivalent of depreciation.

Q. As a matter of fact, that sinking fund is supposed to retire these bonds over a certain number of years?

A. Yes.

Q. It is not put there to take care of depreciation but to pay off the bonds?

A. Yes, but it is similar to depreciation.

page 103 } Q. I am not talking about the similarity.

A. Let me explain: If you have a plant that has a reasonable life of twenty years, and you pay for that plant, you write off a certain amount of depreciation to extinguish that plant at the end of twenty years. That is done in all good business.

By the Court:

Q. In what time did you figure on retiring these bonds?

A. Sir?

Q. How long did you figure, in working out your sinking fund, that it would take to retire the bonds?

A. Generally in thirty years. Those bonds vary in maturity, but your sinking fund on each issue was figured to the exact date of maturity—the number of years that these bonds have to run, and this \$160,000 represents the composite figure of these items. Going back to Mr. Godwin's question, if you buy a plant—

By Mr. Godwin (Interposing):

Q. I am asking what was done in this particular instance?

A. You asked why this is equivalent of depreciation.

Q. You said it was the equivalent?

A. I would like to explain why.

Q. I ask you is there any of this money in that sinking fund placed there for depreciation?

A. It is not, but it is there to retire bonds, but it is equivalent to depreciation because if I spend a million
page 104 } dollars and they pay for it in twenty years, I write it off. When I borrow the money to pay the million, my annuity to retire that debt at the end of the years is absolutely comparable on the basis of the plant I paid for.

Q. Do you mean to tell the court you are an expert on depreciation of machinery and water works property, and that this will depreciate in thirty years?

A. No.

Q. Then it is not the equivalent of that?

A. If you want, I can qualify as an expert.

Q. Are you a mechanical engineer?

A. No.

Q. Are you a Public Accountant?

A. I am an engineer also.

Q. What kind of engineer?

A. Automotive engineer.

Q. Did you ever get membership in automotive engineering?

A. Yes, I can qualify as an engineer.

Q. How long have you been a Public Accountant?

A. I have been a Certified Public Accountant since 1910.

Q. Now, in these figures, in these particular figures you have given here, for the operation cost of the Water Works plant, that includes the maintenance of that plant page 105 } in its present state of efficiency, doesn't it?

A. No, I would not say that.

Q. Well, isn't the plant kept up in an efficient manner?

A. As far as you can see it, yes.

Q. It is kept in an efficient manner?

A. As far as you can see it.

Q. And out of this general fund money is spent for that purpose?

A. For maintenance and upkeep. That is natural. The same thing is true of any business.

Q. Now, Mr. Hilton, to go back to these reports that have been filed here for 1929, you worked over a report there with the Auditor which set up actual revenue for 1928 of \$843,490.45; is that right?

A. Yes, sir, that is right.

Q. Making a total of the actual revenue for that year of \$859,283.67; is that right?

A. No.

Q. Sir?

A. That is not our figure.

Q. That is the figure in this audit?

A. What page is that?

Q. Page 14.

A. Both figures are the same with the exception in this report furnished the court we have added \$733.72 for the sale of junk, which you will find is contained in page 106 } the next column as extraordinary income, on page 14. The two agree absolutely with the report.

Q. How much does the sale of junk amount to?

A. \$733.72.

Q. Doesn't your report that you furnished to the court there show \$848,000, approximately?

A. After deducting \$12,000 for the reserve which is not deducted here. The Certified Accountant takes his reserve in one figure in another place.

Q. Nothing was deducted by the Certified Public Accountant for that year, was there?

A. He carried it in a general reserve for losses, and did not apply any part of it directly to the Water Department. This is not an accounting of the Water Department, or any other department of the City of Norfolk; this is not an accounting with any one department of the City of Norfolk but an accounting of all departments taken collectively.

By Mr. Sebrell:

Q. When you say this, what do you mean?

A. The Auditor's report. I have segregated the actual Water Department from the books of the City, confirmed by these records.

By Mr. Godwin:

Q. As a matter of fact, the total revenue that year from all sources, as shown on page 19 of that audit, was \$855,155.04, was it not?

page 107 } A. Where do you get that?

Q. Look on page 19 at the top of the page, "Department of Public Works", and you will see a total there of its various activities, where the Department took into its hands that year the sum of \$855,155.04; isn't that right?

A. These are cash receipts and have no relation to the revenue for that year.

Q. But they are cash receipts taken in?

A. Taken in by the City, yes.

Q. Over on page 23 you will find "Department of Public Works, the various items of expense for that year, will you not, under "Collections and superintendence, water inspection, mechanical and distribution, pumping station and fixtures"?

A. Now, you are going to expenditures.

Q. Is that right?

A. That is right—correct expenses for those items. These do not represent all of the expenditures applicable to the Water Department.

Q. Why not?

A. Because there are other expenditures which belong to the Water Department which are carried in other accounts.

Q. What are they?

A. In 1928 we had one small item of extraordinary expense \$87.90. We had an item of \$62.18 that comes from the increase in their inventory at the end of the year over the page 108 } beginning of the year, which is handled here through one inventory account; and then we had in what they call their storehouse operation, which is not in this accounting but is another part of this report, the Water Department made \$2,208.78 on account of storehouse operation, which is deducted from the gross operating expense of the year.

Q. That is not shown in this audit nor in the statement you furnished the court, is it?

A. Yes. We show \$245,390.89 as the ordinary operation of the Water Department for the year 1928.

Q. Where is the \$2,000 you were supposed to have made on the stores?

A. I will have to find it.

Q. I mean on the statement you furnished the court and marked as an exhibit?

A. This is the net ordinary operation of the Water Department for that year, but the working papers, the details which makes up this figure, are not here.

Q. Is that \$2,000 included in this statement that you have furnished the court anywhere?

A. Yes.

Q. Where is it?

A. In the net figure \$245,390.89.

Q. As a profit or as an expenditure?

A. As expenses of the year.

Q. I understood you to say you made a profit page 109 } of \$2,000?

A. That profit was in the storeroom operation incidental to the general operation of the Water Department.

Q. Did you include that \$2,000 in your income for that year?

A. No.

Q. And you charged the expense of the storehouse to that?

A. They don't sell outside.

By Mr. Sebrell:

Q. Tell what the storehouse is?

A. All the charges of the Water Department are charged to the storehouse account, and when they are disbursed to uses of the Water Department that is credited to the same account and to take care of the clerical hire and operating expense. So, if there is an overcredit to the Water Department storehouse, there is a paralleling overcharge to the water operations. It is all in the Water Department, and,

therefore, any book profit made from that Water Department storeroom or warehouse is credited to the operation which was overcharged with that over-writing commission.

By Mr. Godwin:

Q. Now, in this audit you have furnished the court, you have not taken into consideration anywhere the amount of inventory that you had on hand at the end of the year?

A. Any supplies, yes. It is all worked in through that account every year. I will point you right to that while we are on it: If you will turn to the year 1928, page page 110 } 12 of the audit report, which is the summary of all revenue and expense of the City of Norfolk for the year, taken collectively without any regard to Water Department or any other subsidiary or operating department of the City of Norfolk; therefore, in this statement, in the way of revenue or of expense, it covers the revenue and expense of the Water Department.

Q. That is taken care of in this audit, isn't it?

A. Yes, but you see we don't take anything into account for inventory. You will notice under "Expense" there was added "Decrease in inventories of departmental supplies".

By Mr. Sebrell:

Q. Added in what?

A. In the audit report. It was included as part of the expense or the adjusting of expense to close the books prepared for that year, so all inventories are taken and applied in this statement.

By Mr. Godwin:

Q. Now, for the year 1929 the audit of the City of Norfolk shows actual revenue of \$878,284.65; is that right?

By Mr. Sebrell: What page is that?

Witness: Page 14. That is correct and in agreement with the schedule furnished the court.

By Mr. Godwin:

Q. Then they actually received that year, as shown on page 19, \$902,737.33, didn't they?
page 111 } A. That much money was allocated by the Auditor to the Division of Water, but not all of that amount represents the collection of revenue of the Water Department.

Q. But that is the amount of actual money that they took in?

A. It might or it might not have been. They might have sold bonds that year and it could be classified as water money, and it is not put in here.

Q. See if you see any sale of bonds?

A. Not in here.

Q. Then that inference is not even correct, is it?

A. It is correct. I cannot read the mind of the Auditor who made this paper as to how he classifies water receipts.

Q. Certainly it doesn't come from water rent—I will read you this statement: "Water rents, penalties, fishing permits, rent surplus land, rent of meters, sundry expense credits, installing taps and extending pipe line, miscellaneous sales and refunds, replacement truck equipment, muskrat privileges, city lakes." That was the amount of money that they took in that year, wasn't it?

A. It was the amount of money received by the City, but it was not the amount of revenue received by the City.

Q. What part of it is not revenue?

A. Installing taps and extending pipe line. The biggest item in there, \$43,000, is not a revenue item.

Q. Where did that come from?

page 112 } A. I cannot tell without reference to the books.
Q. How do you know that it did not come from income?

A. The very nature of the item indicates it.

Q. You don't know where it came from, do you?

A. I don't know, but I know that it is not revenue, and I checked all the revenue to make this statement and know that that is the correct revenue.

Q. I notice here in your statement, on page 14, that you say your actual revenue is the amount of water contract that you have of \$870,444.44?

A. That was the charge for that year.

Q. Actual working contract?

A. Not contract, but actual water bills rendered.

Q. If that is the actual amount that you rendered how did you all guess that it would be estimated at \$859,000 in your estimated revenue?

A. That estimate comes from a budget that is set up by the Council and the City Manager in October of the year prior to which this revenue actually occurs, so it is entirely anticipated. That is a figure that is simply put in here for comparison and information and has nothing to do with the exact accounting on the City's finances for the year. It is purely a guess three or four months before any of that expense or revenue begins.

Q. Now, for the year 1930: Your total collection page 113 } tions that year, or your actual revenue, was \$889,996.23, wasn't it?

A. What page is that?

Q. Page 25.

A. The revenue shown by the Certified Public Accountant's report is \$889,996.23 plus \$1,247.31 extraordinary.

Q. Now, tell the court how much was actually put into the hands of the Water Department that year?

A. The amount classified by the Certified Public Accountant making the audit for the year 1930 as cash receipts of the Division of Water, is \$886,813.36.

Q. Now, that very year Mr. Walter Taylor, who is Director of Department of Public Works, made a report to the City Council in which he stated that the total revenue was \$891,663.92; is that right or wrong?

A. I cannot testify as to Mr. Taylor's report.

Q. Well, is that figure right or wrong?

A. It is within \$420 of being the exact figure shown by the City's books.

Q. You have got here in 1930 that the total receipts were \$879,000?

A. On the schedule filed as an exhibit with the court, the total earnings or revenue, the total revenue of the Water Department for the year 1930, is \$879,243.54, after allowing for reserve of \$12,000 to cover uncollectible items.

Q. As a matter of fact, that year they did not page 114 } charge anything off, did they?

A. No.

Q. You, as a Certified Public Accountant, have charged off \$12,000 in this report which you submitted to this court, and the City never charged off a cent; isn't that right?

A. No. That is wrong. That is charged off for that amount that is set up as a reserve at the time the Council adopted the budget. The City Auditor has nothing to do with that. The Council estimates what will be a fair shrinkage on the accounts receivable for the year and orders that amount reserved.

Q. You heard the Auditor make the statement this morning that that was the Auditor's deduction, didn't you?

A. The pro-ration of this amount to the Water bills was made when this statement was made up, but it is borne out by a percentage that is set up by Council of the gross receipts of the year, and it is using that percentage as applied to gross receipts of the Water Department to determine the \$12,000.

Q. In other words, in order to make this statement show

a loss each year instead of a profit one year and a loss the next year, you have had to split up these charge-offs over the period of years instead of fixing them as of the year that they were actually charged off, haven't you?

A. No, absolutely not.

Q. If you did not charge off anything in 1930, page 115 } and nothing was charged off in 1930, that year you would have shown a profit of approximately \$11,300, wouldn't you?

A. If you would ignore any question of doubtful accounts, when you have carried on the business since 1872, or any other date, and your experience shows that your loss on accounts is five percent, or ten or twenty percent a year, as good business you will set up reserve to prevent fooling yourself, and that is what the City of Norfolk has done.

Q. You have been an auditor for many years?

A. Yes.

Q. And whenever you make up an audit of the affairs of any corporation, you make up your charge-offs for that very year?

A. On an estimate.

Q. And you do not go back and charge it all off one year and then estimate that big charge over a period of three years?

A. It is the very thing that is done all the time.

Q. You do that for big corporations?

A. Absolutely. Every corporation sets up a reserve for possible losses. You may set up \$100,000 in a concern for possible loss, and you may not charge a nickel, and you may create a reserve of four or five hundred thousand dollars, and the next year you may write-off four hundred thousand dollars in one year, because it is only in that year you know that that account is of no value.

page 116 } Q. As a matter of fact, that was not done in this case because it was treated as actual revenue and was not charged off that year, was it?

A. But the reserve account was set from it.

Q. Where is that reserve account?

The Court: Gentlemen, it seems to me you are losing a lot of time in trying to confuse what seems to me to be pretty plain. I do not see what difference it makes whether he charges off an item this year or next year. He sets it aside and if he collects it he is liable for it. Taking all these items here it is *de minimis* and it is fighting over nothing.

Witness: If Mr. Godwin will refer to page 12 of the 1929 report—

By Mr. Godwin: (Interposing)

Q. I am talking about the year 1930?

A. Every year is the same, but I will go to 1930: It doesn't make any difference, because it happens every year. On page 23 of the 1930 report you will note the total revenue for the City of Norfolk, for the year 1930, is shown as \$7,548,915.55. The next item under that is a deduction to cover "Provision for bad accounts, \$50,000." The water revenue for the year 1930 is included in the \$7,548,915.55. The \$12,000 for possible bad and doubtful accounts of the Water Department is contained in the \$50,000 reserve, and that is taken out of the accounts in closing the page 117 } books of the City for that year.

Q. And you set up a reserve there of \$12,000 for this amount of water rent, and only set up \$50,000, I think you said, for all the rest of the expenditures of the City of Norfolk? Is that right?

A. Not expenditures, but the rest of bad account of the City of Norfolk.

By the Court:

Q. You set aside a reserve, say of \$12,000, and the next year you collect it, and it goes back to the Treasury on account of income?

A. It does. It is all accounted for in extraordinary revenue.

By Mr. Godwin:

Q. I understood you to say there is a difference between your report of four or five hundred dollars and Mr. Taylor's report to the City Council. Mr. Taylor reported in 1930 that the operating costs were \$252,000 and you report here \$240,000. You are off, either one of you?

A. I cannot testify as to Mr. Taylor's report.

Q. Which figures are correct?

A. I will say that these figures are correct as to the books of the City.

Q. In 1931 what was the total amount going to the Water Department?

Mr. Sebrell: Do you mean that that is the page 118 } total amount of bills or accounts received?

Mr. Godwin: The total amount of cash going to the Water Department that year.

A. You ask the total amount of cash going to the Water Department for that year?

By Mr. Godwin:

Q. Yes. None of the money goes to the Water Department?

A. None of this money is segregated to the Water Department.

Q. Or placed to the credit of the Water Department?

A. It is not.

Q. Or credited to the Water Department?

A. It is not.

Q. Or set up as money received by the Water Department?

A. That might be, but it is not in control of the Water Department to spend, if you have that in mind.

Q. No, I do not have that in mind.

A. I wanted to get that straight. The amount shown as cash receipts of the Division of Water for the year 1931—

Q. (Interposing) What page is that?

A. Page 35. (Continuing answer above)—by the Certified Public Accountant is \$887,939.02.

Q. None of that came from bond issues, did it?

A. No, sir.

Q. None of that for 1930 came from bond issues either, did it?

page 119 } A. No.

Q. The only one year it came from anything that might have been a bond issue was the year for the extension of water mains that you referred to just now, was it not?

A. So far as I know, yes, sir, but I still repeat that the cash receipts have no relation to the revenue for the specific year.

Q. To the specific year?

A. No.

Q. But it has something to do with the total revenue for that year, hasn't it?

A. No.

Q. Or it is the total amount that was paid into the City by reason of the Water Department for that year, whether it came from 1928 or 1929 or 1930?

A. It was received for the specific year, but it had no relation to the operation of the Water Department for that particular year.

Q. Now, that very year Mr. Walter Taylor made a report to the City Council. I ask you to look at page 70 of the report. He shows that the gross revenue for the Water Department that year was \$889,085.30; is that right?

A. I do not find it.

Q. On page 70 of the annual report for the year ended December 31, 1931.

Mr. Sebrell: It is not in the Auditor's report.

page 120 } By Mr. Godwin:

Q. Is that correct, or not?

Mr. Sebrell: Is what correct—that he made the report?

Mr. Godwin: That amount.

Witness: Total revenue for the year 1931 of the Water Department, after allowing \$16,000 reserve for bad and doubtful accounts, was \$872,590.21.

By Mr. Godwin:

Q. Now, Mr. Walter Taylor reported that year, and the City Council adopted it—

Mr. Sebrell: I submit that there is no such evidence. My friend is assuming a great deal.

By Mr. Godwin:

Q. (Continuing question above)—that the operating expense that year was \$240,257.92, which is about \$4,000 less than you found; is that correct, or not?

A. All I can testify to is the figures built from the records of the City—the financial records of the Auditor's Department.

Q. And Mr. Walter Taylor reported that the net profit for that year from the operation of the Water Department was \$648,427.38; is that right?

A. Something is wrong there.

Mr. Sebrell: Don't comment on Mr. Taylor's report, but whether the figures are correct.

page 121 } Witness: I don't know.

By Mr. Godwin:

Q. And, after paying out interest and sinking fund of \$652,623.28, he reported an apparent deficit of only \$4,196.00, and you show a deficit of \$20,000; which is correct?

A. The statement submitted at this time is the correct statement taken from the books of the City of Norfolk.

Q. How much was charged off that year, 1931? How much was actually charged off in 1931?

A. \$22,024.22.

Q. Which closed and balanced all accounts up to January, 1930, didn't it?

A. Oh, no.

Q. Well, is Mr. Taylor wrong in this report to the City Council?

Mr. Sebrell: If your Honor please, I submit that he has no right to ask the witness whether Mr. Taylor is right or wrong. Mr. Taylor may make an entirely different kind of report. He can only testify to his statement.

By Mr. Godwin:

Q. Is this statement correct, "There was charged off during the year \$22,024.22 uncollectible bills, closing and balancing all accounts up to January, 1930?"

A. I could not say as to that.

Q. Is this true, that, "Losses from unpaid page 122 } bills have run less than two and a half percent annually, a most creditable showing"?

A. I cannot answer.

Q. Now, in this audit that you made, how much has the City included in water rent for fire hydrants?

A. It would be impossible for us to give you that.

Q. You audited the books, didn't you?

A. Not in detail, no, sir.

Q. You had to do it in detail to get the results, didn't you?

A. Not to all sources of revenue or expense.

Q. You did not consider all sources of revenue when you were auditing the books?

A. I have not audited all the details of the books.

Q. You are simply up here testifying to something which somebody else has gotten up, and you are testifying to the results?

A. No; I worked it out when it was compiled, and it was compiled under my supervision.

Q. But you did not compile the records as to receipts?

A. Not as to the source of receipts. The Auditor's office of the City of Norfolk gets periodical reports from the various departments, and these are brought into the accounts.

Q. Maybe then you can tell me how many bonds were paid off in the year 1930?

page 123 } A. The records would have to stand for that.
I have never worked up any detail as to the actual amount paid off.

Q. Will you take this audit and tell us how much is in the

various sinking funds now on bond issues issued for water purposes?

A. It is impossible to do that from that.

Q. Will not that record show it as assets to the City?

A. No.

Q. Isn't there a place in there for showing how much the sinking fund is for the various bond issues?

A. Yes, but that does not show separately for the water bonds.

Q. Doesn't it show the various bond issues in there?

A. It does.

Q. Just turn to it, please?

A. I know what you are talking about. You cannot identify all the sinking fund belonging to water bonds for the very reason that certain bonds are issued as public improvement or general improvement bonds, either a large portion or a small portion of which would represent water expenditures, so you would have to take a detail work-out of that bond and determine the percentage which belonged to water and the percentage to other purposes, and then figure out the sinking fund reserve.

Q. Can you work up that statement?

page 124 } A. Not now.

Q. Can you submit it before the end of the case?

A. That is the same one you asked Mr. Breeden for, and he can do it.

Q. You could not tell it from this, could you?

A. No, not the exact amount in the credit of the sinking fund for water bonds.

Q. What do you mean by cumulative annuity?

A. You put so much into a fund for annuity; the annuity earns a minimum base of four percent and with increment added to the bonds produces the principal sum at four percent compound interest.

Q. Doesn't it show here a total of all of Norfolk bonds or sinking fund?

A. That is cumulative interest.

Q. An annuity of \$8,577,447.94?

A. I expect that is true.

Q. On page 46 of the 1930 report?

A. If it says so there, it is right.

Q. I want to ask you to look at that and see if every bond issue issued by the City of Norfolk is not in there and the exact balance to the sinking fund set opposite it as of December 31, 1930?

A. That is true, but you asked the question as to the amount

to the credit of the Water bonds and items shown in that statement as to water bonds only do not represent page 125 } sent all of the bond issue for water purposes.

Q. Now, your water bonds are separate and apart from the general bonds of the City, are they not?

A. No, absolutely not.

Q. Aren't they designated water bonds?

A. No.

Q. "Water series F, were series G, water series C," and so on down?

A. Those are just those particular issues, but you have public improvement bonds for some. You may have public improvement bonds for one million dollars. When Council authorized the sale of these bonds, the City might have accumulated under that \$200,000 for water, \$200,000 for schools, \$500,000 for some other purpose and \$100,000 for something else. That is all accumulated and issued as general bonds, but only \$200,000 is for water. All of those general bond issues would have to be segregated with the records to find out how much was in the Water Department.

Q. I want to ask you how much cash was on hand, received through the Water Department, at the end of each year in question here?

A. I can't tell you.

Q. Your audit will show?

A. No. The cash goes into a general government basket, and that money is all disbursed on the vouchers of the City without regard to whether it is water, or general page 126 } eral government, or Department of Public Welfare.

Q. Have you been auditing the books of the Water Department?

A. No.

Q. You have never audited them?

A. I have audited them, but not during this period.

Q. Mr. Hilton, in order for you to get the amount of interest that is due on water bonds, you certainly had to segregate those bonds to get which they were, didn't you?

A. There is a record in the City Auditor's office, a segregation of water bonds.

Q. And you reported that the interest on the water bonds for the year 1927 was \$454,000, and you reported what the sinking fund annuity was on water bonds?

A. That is true. That is in the office.

Q. Did you segregate those bonds?

A. There is an exact tabulation.

Q. Don't you know what those bonds are?

A. I do not. I haven't the information with me.

Q. Now, on the ordinary expenses that you all have filed here for the various years, you did not make up a detail list of what those expenditures included, did you?

A. Yes.

Q. Have you got those?

A. Yes.

Q. Will you furnish those to the court, please?

page 127 } A. It is just a pencil copy.

Q. These are actual expenditures?

A. Yes. Do you want them read into the record?

Q. I want to know what they include?

A. There is so much detail it will take the rest of the afternoon.

Q. They are all the same thing for the five years?

A. The same classification. For instance, for the year 1927—and this runs through the entire six year period,—account 381 on the City books is known as collection and superintendence of the Water Department. Under that we have account 381-1, which represents personal service, \$27,-495.08.

By Mr. Sebrell:

Q. Explain generally what it is?

A. In the same group we have account No. 2, which covers material. Account No. 3—

By Mr. Godwin: (Interposing)

Q. Which covers material?

A. Yes.

Q. That is all material purchased for the Water Department; is that right?

Mr. Sebrell: Mr. Godwin would have you buying some improvement, or machinery, or something of that kind; if you are talking about material such as alum and chlorine, it is all right.

page 128 } Mr. Godwin: I am asking him to explain that, and not his Counsel.

Mr. Sebrell: Let him say what he means by material.

Mr. Godwin: I wish counsel would let me have the witness a minute.

The Court: Get at the point you want, and don't let's beat around.

Witness: Account No. 2 covers materials which are used only for repairs and replacements,—nothing for buildings or capital expenditures. Account No. 3 covers supplies for

articles used once or of short duration—that is any kind of supplies that the Department may have to have in that group. Account No. 4 covers repairs. Account No. 5 covers fixed charges.

By Mr. Godwin:

Q. What do you mean by fixed charges?

A. Anything in the way of damage claims or pensions. Expense charges but not anything in the way of overhead. Account No. 6 covers general operation. Account No. 7 covers small equipment. All of these accounts are broken down in to further subdivisions. Do you want to file that as an exhibit? This gives all the classifications, and that is complete (handing paper to Mr. Godwin).

Q. When you say in this audit "Mechanical and distribution," what do you mean mechanical as an expenditure? Is that expense concerning machinery?

page 129 } A. Mr. Bliven will have to answer for just the Divisions which come under there. I cannot.

Q. And your item of ordinary expense includes all on this sheet Exhibit No. 8, which is "Interest, sinking fund, repayment bonds and loans?" Is that right?

A. It covers all those classifications, plus certain extraordinary expenses, insurance, auto expense, inventory adjustments and storehouse operations for the six years shown in the exhibit filed with the court.

RE-DIRECT EXAMINATION.

By Mr. Sebrell:

Q. Now, Mr. Hilton, in order that we may make clear just what you mean by these repairs, do you refer, when you say repairs or replacement, to anything which goes into the capital or book value of the plant?

A. No.

Q. Are you referring just to current repairs?

A. Current ordinary repairs.

Q. Do you mean anything when you use the word maintenance, which Mr. Godwin wanted you to use—by "maintenance" do you mean you have made any replacement of any substantial part of the plant, or just the maintenance in operation and upkeep?

A. Maintenance in operation.

Q. Does any of your expense account include
page 130 } any replacement in the material part of the plant?

A. No.

Q. Does any of it cover any deterioration in this plant?

A. No.

Q. So when you say replacement and repairs, you mean those current in the plant for that particular year?

A. Yes, repairs of a minor nature.

RE-CROSS EXAMINATION.

By Mr. Godwin:

Q. Do you mean to say you have been buying extra equipment with this \$260,000?

A. No.

Q. Didn't you buy \$7,500 worth of meters one year?

A. It may have been. What year was it? I do not believe that there are any meters like that.

Q. Are any inventoried on hand?

A. That would be in the storehouse, and if those meters were put out into the mains, it would go into the capital account and not the operating account.

Q. Where do you get the capital account from?

A. Borrowing money.

Q. Do you mean to say every time you buy \$7,500 worth of meters you issue bonds?

A. No. We advance the money out of the corporate fund, provided there are no unexpended bond balances page 131 } available for the purpose.

Q. How much of that do you hold against the Water Department today?

A. I cannot tell you how much there is right now.

Q. You have just recently made an audit of all the affairs of the Water Department?

A. I say we have no separation of the Water Department at all. It is all a part of the general city account, and there is no segregation.

Q. Every time you want to extend a small main, you have to do that out of the bond issue?

A. Either out of bond fund balance or out of an appropriation from corporate funds, and that accumulates until there is enough to pay an issue of bonds. It may be considered improvement, or water meters, or water mains, but it all comes under one general issue of improvement bonds. The City now has a million and a half dollars in an account of that kind awaiting sale of bonds.

Q. And you mean no additional property has been bought out of the money obtained through the Water Department?

A. No.

Q. You do not mean that?

A. I mean it. There has been nothing.

Q. You mean there has been no sewer laid out of money derived from the Water Department?

A. Not from operation.

page 132 } Q. Will you submit in here—not now, but we want it done,—we want to know what this item of ordinary means for these years, and you can submit it at any time.

Mr. Sebrell: Let him tell you right now.

Mr. Godwin: We want to see what it is, and I think we are entitled to know.

Mr. Sebrell: He can tell you.

Mr. Godwin: I don't want him to tell me, but to submit it.

By Mr. Godwin:

Q. Have you got the items worked out on that sheet?

A. Yes.

Q. Will you submit the sheet?

A. That is my working sheet, and it would have to be typed.

Q. Submit it in evidence and type it later.

Mr. Sebrell: Let it come out in the regular course.

Mr. Godwin: I do not want to delay it. The court can have it. He has been testifying from the work sheet, and I ask that he submit the work sheet in evidence, and if he wants it back I am willing for him to take it provided he inserts a typewritten copy.

Mr. Sebrell: The reason that the law admits a statement of the total receipts is to prevent going into a lot of interminable items it would take the court an un-
page 133 } necessary long time to get at. The law, as I understand it, permits the general statement, where the Auditor has made his books, and we put them here for examination, if he wants to make an examination, and the sum total resume is all that is sufficient. The law books have gone so far as to say that a detail statement would be confusing to the jury and even to the court where there are a great number of items that the court could not carry in mind.

The Court: I do not want to be arbitrary in keeping out anything that counsel thinks is of importance, but I do want to insist upon some limits to the interminable questioning about minor details. I am assuming that these gentlemen are all trying to tell the truth about this thing; the books are here, and I do not want to go into detail after detail to clutter up the record. I want the facts to come within the

record so it can be disposed of. Of course you are figuring on it being disposed of in some court higher than I am, and want them to have everything.

Mr. Sebrell: May I look at the statement you are talking about, Mr. Godwin?

Mr. Godwin: He prepared them for you all, but not for me.

Mr. Sebrell: He prepared them to tell this page 134 } court what he knows about the case. To save time, suppose your Honor lets him file the statement temporarily.

Mr. Godwin: I asked sometime ago that it be filed.

Mr. Sebrell: This is his working sheet. Suppose you leave that.

The Court: He can make a copy and file the copy.

Witness: This should be connected.

Mr. Sebrell: Connect it up and show what you have done.

The Court: Are you through with this witness?

Mr. Godwin: Yes, sir. I understand that that is in evidence?

The Court: Yes.

Mr. Sebrell: Connect it up so the paper has some sense in it so we will know what it means in the record.

Witness: The total operating expense shown for the year 1927 is \$237,149.96, composed of the following detail: Account 381—

Mr. Sebrell: Say shown on exhibit number so and so, and file that exhibit.

Note: The papers are marked Exhibits 1 and 2.

Exhibit No. 3 is "Subdivision of Groups."

page 135 }

W. R. L. TAYLOR,

a witness on behalf of the City of Norfolk, being duly sworn, testified as follows:

Examined by Mr. Sebrell:

Q. State your name?

A. W. R. L. Taylor.

Q. What is your position with the City of Norfolk?

A. I am a member of the Council, President of that body, and, under the charter, ex officio hold the position of Mayor.

Q. How long have you been a member of the City Council?

A. I took my seat on that Council the first of September, 1930.

Q. And you have been a member since?

A. Yes, continuously.

Q. Mr. Taylor, the Water Department of Norfolk City is operated under (the expenditures) the control of City Council?

A. Exactly.

Q. The policies and plans and purposes and the revenues are made according to the policy prepared by the City Council?

A. That is correct. The Council is the policy fixing body.

Q. What is the policy of the Council in fixing water rates with regard to making revenue or profit?

page 136 } A. Mr. Sebrell, I have been a resident of the City of Norfolk since December, 1897. The policy of the Council up to the time I became a member of it is, of course, historical. I do not understand that there has been any change in that policy in the four years of my membership. The construction and operation of the Water Department—

Mr. Godwin: (Interposing) I object to this line of testimony on the ground that it is not what the policy of the City is, but whether or not they are selling to consumers outside, and whether they have made or lost money, and whether or not they are operating for a profit. The figures speak for that, and it is not the history of the Council of the City of Norfolk, but what the facts in the record show. It is wholly immaterial and has no place in this record.

The Court: I do not see how it could help me very much, but I will let him go ahead.

Mr. Godwin: Exception.

Witness: The construction and operation of the Water-works has been entirely for the purpose of furnishing a necessary and vital public facility, and without its operation being a charge upon the City revenues, and at the same time without the reflection of a profit in its operation.

By Mr. Sebrell:

Q. With reference to the rate making, how has that rate making been in regard to making or not making
page 137 } a profit?

A. The rates have been fixed and approved by the Council, with the idea of obtaining sufficient revenue to meet ordinary operating expense, the interest and sinking fund charges against the issues outstanding for the construction of the work.

Q. I want to ask you what was found necessary on the part of the Council in order to make the rates which are

now charged for water furnished equal to the amount of the expenses?

A. Mr. Sebrell, sometime before I became a member of the Council (I think it was following the actual construction of the Lake Prince project), it was found necessary to institute the practice of fixing a minimum service charge, or what is commonly known with us as "Ready to serve" charge, in that the usual and ordinary rates which had been applied to gallonage or flat rates would bring the revenue up to the point where the City would not be losing an immense amount of money per annum out of ordinary operation.

Q. When you were elected to the Council, I believe you were committed to try to do away with that charge?

A. Yes, that is true. That is one of the most embarrassing incidents of my public life. I was entirely committed, due to misapprehension of the fundamentals underlying it, to the abolishment of the "Ready to serve" charge. When I became a member of the Council, after election, page 138 } and got my feet wet, I found if I attempted anything like that the Water Department was entirely on the rocks, and I had to make a public retraction of all my statements, looking to keeping the Department going as it should.

Mr. Godwin: I object to the candidate's declaration or platform and those things. Whether he was for or against it, I admit that the people of the City of Norfolk made a wise selection of Mr. Taylor as councilman, but it hasn't anything to do with this record.

Mr. Sebrell: I think it material, as a member of the law-making body of the City of Norfolk, even though he was opposed to this service charge, that he found that it was necessary to maintain the service charged under the financial statement of the City, in order to make ends meet, and that it was maintained to keep from making a loss and not for the purpose of making a profit—that they did not intend to make a profit, but to make ends meet.

The Court: He said that.

By Mr. Sebrell:

Q. Is there any further statement you wish to make?

A. Nothing occurs to me except to say that it is the general policy. If we assume we were making money on the water end of the City's operations, the rates page 139 } would be immediately cut in order to pass that back to the citizens who take water. It is not

operated for that purpose. If there is any profit at all made, it is simply incidental.

Q. Now, Mr. Taylor, in making up the annual budget for the operation of the Water Department, what do you do with regard to profit or loss and your calculations as to the amount?

A. Under the City charter we are permitted to deduct five percent from the estimated gross revenues of the City—and bear in mind that I am speaking for budget making purpose only,—five percent loss and deduction from the estimated revenues reserved to take care of such loss as may occur from revenues derived from all sources in actual performance. Necessarily that figure of revenue is an estimated one. You have more or less of a basic figure to go upon, that is your actual revenues, and now I am speaking in terms of revenue and not in terms of cash. You have the revenue for the preceding year and the performance of eight or nine months of that year in which the budget is made for the succeeding year, and, of course, we have departmental revenues, for instance of the Water Department, which will indicate the revenue for the two periods that I have mentioned. So far as the policy making body, the Council, is concerned, we do not allocate that deduction which we make to any particular department, but set it up as a reserve fund against which the loss may eventually be charged. Some years
page 140 } ago we only set up a very nominal reserve amount, probably \$50,000, out of an estimated revenue of seven million dollars. Our experience has demonstrated the inadequacy of it, and we now take the entire amount allowed by law of \$360,000. During my period of service in the Council, the water bills which had proven entirely uncollectible were never charged off annually or at any periodic time, so far as I recall, but they were gathered together sporadically, an accumulation of several years, and then charged against that reserve. For instance, I could not give you an exact figure; I know in several instances, since 1930, there have been very large charge-offs in the aggregate. As I recall quite recently, in the current year, there has been a charge-off on one occasion in excess of \$30,000; an accumulation of bills covering what period I don't know, but those charge-offs at the present time are accumulating so much, due to the relief of charity situation, it renders them impossible of collection.

Q. In your annual appropriation for the year in which you have a statement of the total revenue during the year from which you may fix the tax rate to cover expenditures, has there been, since you have been a member of the Council,

since 1930, any revenue coming from the Water Department?

A. Mr. Sebrell, I don't know that I understand your question exactly. If you are using the term revenue page 141 } as an excess of bills set up over and above the normal operating expense, plus your interest in the sinking fund, my answer is no.

Q. Not revenue?

A. There has been no net revenue taken in contemplation. As a matter of fact, if you get one of your graphic statements, which has been annexed to the budget, you will find that the Water Department revenue was set up on a percentage basis, I believe at twelve and a quarter percent of the City's revenue. You will find when it came to the expenditure side of it, that about nine and a quarter percent of that revenue from that source went to debt, or interest and sinking fund, and about two and a quarter to operation, and there was a leeway of only about one-fourth of one percent there.

CROSS EXAMINATION.

By Mr. Godwin:

Q. Do you mean by that, that the Water Department has been making only about one-fourth of one percent out of its water activities?

A. I don't know that it is making that, after taking into account the loss accruing from bad debts to the reserve set up. I mean to say, for the purpose of estimating the receipts and expenses, there is a leeway of one-fourth of one percent.

page 142 } Q. You are not familiar with the figures in detail?

A. By no manner of means.

Q. As a matter of fact, in 1930—Mr. Taylor, the engineer, is a very active man, is he not?

A. I have the highest regard for Mr. Taylor as a man and as an engineer.

Q. The total cost of putting water into the City of Norfolk has decreased right along with each year's operation, hasn't it?

A. That I cannot tell you.

Q. Hasn't that been his report to your Council?

A. Mr. Taylor never makes a report to the Council. Mr. Taylor reports, and the reports which you have continuously adverted to in the evidence as being made to and passed upon by Council, are departmental and are made to the City

Manager, and the City Council has never seen one until they come in printed form.

Q. Do you mean to say the Council does not see these?

A. Not until after they are printed. If you will look at the reports made by Mr. Taylor and other departmental heads, you will find that they are addressed to the City Manager, and the charter requires them to be printed.

Q. And they are reported to your body?

A. To the same extent that they are made available for public perusal. They do not come to us for review, and I never see one until it actually appears in print.

Q. Do you not know it as a fact that for the past page 143 } ten years the cost of producing and selling Norfolk water has gradually declined?

A. No, as a matter of fact I do not.

Q. You say the policy is not to make anything; do you know that the City Council of Norfolk, if they set the rates, are charging outside consumers three different prices for water?

A. I am very well aware of that.

Q. Do you realize that they are charging people in Princess Anne and Norfolk Counties nearly fifty per cent more than they are charging the people in the City?

A. Mr. Godwin, I have not figured it on a mathematical basis. I am very well aware that there is a differential there, and I am very well aware that a differential is fundamentally sound. To illustrate, you can furnish three thousand people on one mile of pipe which you can supervise and maintain with little assistance at a cheaper rate than you can serve one man upon the same mile of pipe and that one man alone.

Q. That is just what I am getting at. You charge the people in Princess Anne approximately forty-five to fifty per cent more for water than you do the consumers in Norfolk—

A. (Interposing) I want to know if you are testifying or are you asking me to testify?

Q. I will ask you this: You charge the people in page 144 } Norfolk, under your price here, one dollar for tap connection, don't you?

A. I have no idea. I am not familiar with the detail charges. They are all a matter of councilmanic action. If you have that rate sheet before you, and you say that it is correct, I am not in position to deny it.

Q. That is what the City filed?

A. I assume it is correct.

Q. You charge the people in Princess Anne two dollars for that service, don't you?

A. If it appears on that rate sheet, I say yes.

Q. And you charge the people in Norfolk twenty-five cents a thousand gallons, and you charge the people in Princess Anne forty cents?

A. You are asking me questions I cannot answer.

Mr. Sebrell: I filed it, and here are the rates, and the court can read it.

Witness: I have no desire to squabble about it, as I don't know.

By Mr. Godwin:

Q. The people in South Norfolk, you do not charge them on that same basis, but you charge ten per cent without any additional cost of tapping the water line, don't you?

A. It is my understanding that there is a differential of ten per cent against the water takers in South Norfolk. I am not at all familiar with the water tapping charge that is made personally.

Q. Would you be surprised to know that you are charging only ten per cent more than the City of Norfolk and another class between forty-five and fifty per cent more than the City of Norfolk?

A. Suffice it to say that so far as I am concerned I have no knowledge of the percentage involved. I haven't worked it out. I haven't given that attention to mathematical detail that seems to interest you so much in it, but the differential does prevail in favor of the people of the City of Norfolk, or, rather, as against the people outside of Norfolk, due to the few takers along the mains in those outside communities and the necessary greater cost per capita or per taker of distribution and the supervision.

The Court: Are you reading from something compiled by the City?

Mr. Godwin: Yes.

The Court: Let us accept that as a fact, and do not ask anybody about it.

Mr. Godwin: That is all.

page 146 } WALTER H. TAYLOR,
on behalf of the City of Norfolk, being duly sworn,
testified as follows:

Examined by Mr. Sebrell:

Q. Your name, please?

A. Walter H. Taylor; Director of Public Works, Norfolk, Virginia.

Q. Mr. Taylor, you hold what position in the City of Norfolk?

A. Director of Public Works.

Q. How long have you been Director of Public Works?

A. Since 1918.

Q. Is that the department which has charge of the water operations in Norfolk City?

A. I have had charge of the water operations since prior to that time under the Board of Control. I have been with the City of Norfolk since 1895, and in that time as assistant engineer, City Engineer and Director of Public Works. I have been in contact with the Water Department activities from that day to the present time.

Q. Mr. Taylor, we will take up this question of water rates. The ordinance of City Council establishing water rates shows a difference in the rate charged in South Norfolk and in Norfolk County and in Princess Anne from that charged in Norfolk City; will you explain to the court the basis of that differential and why that differential has been made?

A. The City of Norfolk acquired a portion of page 147 } the Portsmouth, Berkley and Suffolk water pipes that existed in Berkley and simultaneous with that, for good and sufficient reasons at the time, agreed to acquire the distribution system of the same company in South Norfolk. Had that not been done, South Norfolk would have been without a water supply. The City of Norfolk at that time paid for these properties a price arrived at by arbitration and was, in my opinion, a price of their full worth—more than similar work and cost under my supervision in the City of Norfolk. The works alluded to were distribution mains, connections with houses and meters. There was no supply. The supply came from Portsmouth across the Southern Branch. It was necessary for the City of Norfolk to rearrange the supply line coming from the Norfolk side of the river. I would say it cost the City of Norfolk more per capita to furnish water to its citizens in Berkley than it does on the Norfolk side of the river. We had, in the rearrangement of the distribution system in that area, to lay two submarine mains across the Eastern Branch of the Elizabeth River, costing in the aggregate close to eighty thousand dollars. In addition to that, we had to rearrange the supply pipes into South Norfolk originally coming from the west; they were furnished from the north, and that required quite a lot of work in the laying of the feeder mains into South Norfolk.

At the time of the acquisition of this property, the City

entered into a contract with the Town of South
page 148 } Norfolk to render this service at an increased
cost of ten per cent over the charge made to like
consumers in the City of Norfolk. The City of Norfolk could
not, of course, charge the citizens of Berkley Ward any
more for their water than it charged any one of its own
citizens on the north side of the river. We made a con-
tract that called for an increase of ten per cent for water
served, likewise for any installations that were made, and
that we collect today. To render that service costs us more
than it does a like amount of service in Berkley or in the
City of Norfolk. It is more removed, we have to pump the
water further, we have additional expenses going and coming,
the additional expense of mailing, and the interest charge
alone in the distribution system, required in the rearrange-
ment, at six per cent, which is less than the sinking fund re-
quirement, is more than the ten per cent on the annual col-
lection of water in that part of the City of Norfolk. In round
numbers, last year it was \$40,000, ten per cent of which was
\$4,000. The interest alone on the supply lines, as we had
them installed, to rearrange the Berkley system, was that
amount of money.

By Mr. Sebrell:

Q. Then, Mr. Taylor, knowing the location, the cost, the
expense of operation as you do, will you say to the court
whether or not the ten per cent that is charged in South Nor-
folk over and above that charged in Norfolk City is repre-
sented by the additional cost of production and
page 149 } distribution?

A. It is.

Q. Will you state to the court whether or not that was
the reason for placing a higher rate for water in that terri-
tory?

A. I have never advocated the making of money in the
Water Department of the City of Norfolk from any class of
citizens, either within or without the City. It is a service
that in my opinion should be rendered at cost. It is my opinion
it is the most governmental of all activities of the govern-
ment of the City of Norfolk, and should be rendered at cost,
and that has been my aim in arriving at every charge made
for service to the public for the installation or supplies or
capital outlay account on water consumed, whether within
or without the City of Norfolk.

Mr. Sebrell: In order that the record may be complete,
I will introduce the original contract between the City of

Norfolk and the City of South Norfolk, and I would like to ask leave to withdraw it and, if you want a copy, we will furnish a copy. It is our original paper.

By Mr. Sebrell:

Q. Mr. Taylor, is that the contract through which we furnish water to South Norfolk?

A. It is.

Q. That is dated when?

page 150 } A. It is dated the 27th day of October, 1925.

Q. Now, that was with reference to the water furnished in South Norfolk. Now you also under this contract charge some—in Norfolk County it is a different rate?

A. In Norfolk County the City's rate for the first certain number of gallons used is at forty cents per thousand gallon compared to twenty-five cents in the City of Norfolk. Our rates today are commonly known as combination rates. That is, they are combinations of a flat charge and a meter charge. In the small consumer class of residents, which comprises very much the major part of the revenue that we are now talking about, that charge of sixty per cent more for water, does not represent by any means that the total bill to the consumer bears with relation to a like consumer in the City of Norfolk. There are many hundreds of them, or certainly many of them, that pay the minimum rate in the county which does not bring into play the charge of forty cents a thousand gallons. They pay the fixed flat rate for a minimum number of gallons plus a service charge, and many of them do not go into the consumption of sufficient amount even to bring into play the forty cents of additional rate. I took twenty or thirty or forty accounts at random in the county a few days ago and compared them with like consumers in the City of Norfolk, and the increase is nearer fifteen or twenty per cent

than any other sum,—an increase as a rule from
page 151 } \$2 to \$4 per consumer. In the county we have
nearer seventy feet more of pipe per taker than we have in the City of Norfolk or South Norfolk, so that we have almost seventy feet of additional distribution mains to reach each one of these consumers. Our average cost of distribution main is certainly in excess in that part of the territory of \$1.25 or \$1.50 per foot. That alone, at six per cent, represents more than the difference to the average consumer in the county to the consumer in the city of like kind and warrants in every way, in my opinion, the additional charge levied by the City of Norfolk in the county. It requires more time to read the meters, as it is certainly easily understood, more time to adjust any irregularity in the

service, to inspect the service and to maintain the distribution system, and the increase that we make to consumers outside of the city is too little and not enough, in my opinion, to represent the difference to the City of Norfolk for rendering that service.

Q. I did not catch the figures. How many did you say in Norfolk County per thousand feet?

A. Sixty odd feet—sixty some feet more per taker in the county than in the city.

Q. That means, of course, that the City has to maintain sixty feet of pipe for one man, whereas in the city it would be getting revenue for that sixty feet from several persons?

A. Yes.

page 152 } Q. So you think, Mr. Taylor, that the cost of maintenance, production and distribution in Norfolk County will cost as much more than that same service in Norfolk City as is the difference in the rate which you stated?

A. I do.

Q. Now, with regard to Virginia Beach, what is the rate with reference to Virginia Beach?

A. The town of Virginia Beach came to the City of Norfolk approximately ten years ago rather desperate and asked that the City render that service. It required a large outlay. Ordinarily in the City of Norfolk, unless the return from an outlay for water main equals twenty per cent of the cost of the main it does not return to the City an amount that it should to make the new taker stand fourscore or comparable in any way with the old takers in the City. We have for every dollar invested in the distribution system nearly a dollar in reservoir and filtration plant, so that we have more than three dollar carrying charges, only one of which is represented by the extension of the service. If we do not get interest on all three, they are being carried at the expense of other patrons. That to Virginia Beach meant that the Virginia people, for water, would have to pay the City of Norfolk on the same basis, treating the extension there as a part of the system of distribution, and the Town of Virginia Beach as a customer meant that we would have to have \$40,000 a year because the lowest that we could build the line to Virginia Beach was \$200,000, and

page 153 } twenty per cent on that is \$40,000 a year. They very frankly stated to the City Council of Norfolk that they could not pay more than half of that amount or approximately that. The City Council, in its wisdom, elected to give them service on the basis of \$200,000 cost to the City of Norfolk for the mains to connect with their distribu-

tion system at the town limits, charge them six per cent a year on the \$200,000 or \$12,000, and ten or twelve cents per 1,000 gallons for water graded up if it fell down below a certain amount, the intention of the City Council of Norfolk being to get approximately \$20,000 return from that service which did not line it up with the rest of the system at all, but it was a courtesy of one subdivision of the state serving another. It has not been a profit to the City of Norfolk, and from the time it began to the present time, as compared with all other service we render, is at less cost.

Mr. Sebrell: Now, if your Honor please, I want to introduce the contract between the City of Norfolk and the Town of Virginia Beach with regard to furnishing water. There are several papers here, but I want to introduce only the agreement.

By Mr. Sebrell:

Q. Is that the agreement you refer to, Mr. Taylor?

A. That is the contract.

Mr. Sebrell: I am asking to withdraw that from the papers, leaving a copy.

page 154 } Note: This paper is to be marked, when filed,
Exhibit No. 4.

By Mr. Sebrell:

Q. Is the rate that you charge for water delivered to Virginia Beach any higher than the practical rate in Norfolk City?

A. We charge only ten cents per thousand gallons.

Q. What is the rate per thousand gallons to the ordinary taker in Norfolk City?

A. Twenty-five for the first—

Q. (Interposing) That is shown in the statement.

A. Twenty-five, fifteen and ten, according to the consumption.

Q. Now, in addition to the ten cents per thousand gallons—who constructed the line?

A. City of Norfolk.

Q. And it cost what?

A. \$200,000.

Q. And what was the agreement on the part of Virginia Beach in regard to the payment of interest on the construction?

A. For ten years they pay six per cent annually and ten

cents per thousand gallons for water, provided the amount consumed is not less than a certain sum, and after that it is twenty cents a thousand gallons for a like amount consumed. I will have to have the contract. (A paper is handed to the witness.)

page 155 } Q. That is all right. The Judge can see that for himself.

A. It varies from twenty cents a thousand gallons—

Q. (Interposing) How about the consumers in the County of Princess Anne, not in the Town of Virginia Beach? Have you got many of them?

A. They pay the same rate as Norfolk County pays.

Q. And would your testimony in regard to the rates in Norfolk County apply to those taking water along the pipe line in Princess Anne County?

A. Generally, yes. There are a few takers only in Princess Anne County—some few who are located along the supply mains and have been supplied a long time. The privilege that the City experienced for laying the mains along the county highways, both to Virginia Beach and from Moore's Bridges into Norfolk put them in a little different category and class from the others, and we have charged, however, recently the same rate, but formerly we charged them a little lower rate. They are very small and few in number, and the sum total of revenue from that source is small.

Q. Would you say that the cost of producing and delivering to them the water would justify the difference in rate even in that small amount?

A. I say, due to their distance from the City, occasioning the long distance to travel whenever we have to render service, to read the meters, and so forth, the little difference
page 156 } once I think is thoroughly warranted.

Q. And they are much scattered?

A. Much scattered all the way from Norfolk to Virginia Beach.

Q. I want to ask you what is the condition with regard to the location of South Norfolk and that part of Norfolk County which we serve—its location to Norfolk City and Norfolk City's interest and necessity of furnishing water for fire protection and sanitation?

Mr. Godwin: I object to that. I notice he says in his bill of particulars by reason of Virginia Beach and Princess Anne and South Norfolk being close to Norfolk, that it was therefore a part of their duty to supply these people with water. Now, I say it is no more their duty to supply them with water

than to give them their sewers. It is a different political situation and it is not relevant.

The Court: I don't know that it is, but let him go ahead.

By Mr. Sebrell:

Q. Before you answer that question, how is South Norfolk connected with Norfolk City?

By the Court: By water line?

By Mr. Sebrell: No; the location of South Norfolk to Norfolk City.

Witness: There is a river twenty-five feet deep.

page 157 } Q. (Mr. Sebrell) Between you and Berkley, but I mean between the Berkley part of Norfolk and South Norfolk? Isn't it a fact that a street is the dividing line between the two?

A. Yes. You can't tell when you pass by one into the other.

Q. Is there any consideration of health or sanitation that would make us decide to furnish water to the inhabitants of Norfolk City that would not make it equally as desirable to furnish it to South Norfolk?

Mr. Godwin: I again object to that question and to all of them along that line.

The Court: I allow it.

Mr. Godwin: I except on the same grounds.

A. I take issue—

By Mr. Sebrell: (Interposing)

Q. Go ahead and let us join issue.

A. That there is no difference between furnishing a sewer and furnishing water—certainly in our territory there is a marked difference. There is no ground water that one could tap, and they are either dependent on the public supply or on cisterns. When we had cisterns and ground water supply in the City of Norfolk, the death rate from water borne disease, typhoid, dysentery and diarrhea was at the rate of five per thousand annually. Compared with the present death rate in our community, where the municipality serves water, we save in Norfolk six hundred funerals annually. You can get rid of your sewage. You can build septic tanks and can have outhouses, but you cannot supply any part of the territory with any degree of safety or satisfaction throughout congested population with cisterns and ground water. There is every reason, in my

page 158 }

opinion, for the City of Norfolk to furnish water to the suburban territory and to the people who come into our homes and do our work and who are as much a part of our community as any other and as much a part of the domicile as we are.

Q. Now, Mr. Taylor, I want to take up the question of depreciation. You are familiar with the Norfolk City Water plant, are you not?

A. I think so.

Q. That is a very intimate acquaintance?

A. I was with it first forty years ago.

Q. You know the condition under which the construction was made, and how made, and everything about it?

A. I think I can claim familiarity with it.

Q. Have you had sufficient experience with the water works and water systems to determine and give the Judge some valuable idea as to the amount of depreciation suffered in Norfolk City in the water plant?

A. I have here a map of Norfolk and vicinity which will enable a clearer understanding of this question, so you will have an idea of the Norfolk water supply, both the old system and the new system. This is Norfolk and vicinity. We are situated about midway between the Nansepage 159 } mond *scarfe* and the Atlantic Ocean. Norfolk's original supply came from Moore's Bridges, indicated on this map by a purple star, Moore's Bridges being approximately four to four and a half miles, almost due east, of the City of Norfolk. The original works comprised about twelve miles of mains and a small pumping station on the shore of Lake Wright. From that has grown the present plant. The first development for additional water, Lake Wright proving inadequate, Lake Taylor was adopted in close proximity. Lake Wright and Lake Taylor proving inadequate, Lake Cole and Lake Lawson, approximately two miles further east, were added to the system, the water being pumped from these lakes by conduits to the works at Moore's Bridges. Still there being an insufficient amount of water, the City purchased Lake Bradford and Lake Joyce, still further east, and near the sea coast. In 1900 the City had grown and added Little Creek, two new dams being built across an estuary of Chesapeake Bay, and canals being cut to make all the water of Lake Lawson, Lake Cole, Lake Smith and Little Creek connect at Moore's Bridges. I left out in my recitation one additional lake which is alluded to as Lake Smith. This required the building of four dams and they have become absolutely obsolete. Two new dams across the estuary of Chesapeake Bay, impounding the watershed of all the

previously mentioned lakes except Joyce and Bradford, and held the water so it gravitates to Moore's pumping station.

That took place in 1900. In 1919 the City of Norfolk page 160 } folk had a near calamity of being wholly without water. We were prepared to pump salt water into the mains for sanitation and fire purposes. Arrangements had been made for furnishing people with drinking water through tank cars and wagons, the water to be brought from Portsmouth. A providential rain came ten or fifteen days before that eventuality.

That calamity led to the development of Lake Prince, which lies by this map about two miles from here. From Lake Prince we have a long line of thirty and thirty-six inch conduit or water main of wood, concrete and iron, that brings water of Lake Prince into the City of Norfolk about the 37th Street pumping plant.

Q. The Lake Prince referred to is situated in Nansemond County and is the subject of this tax case, is it not?

A. Yes, Lake Prince was formerly Lake Philips, and was purchased from the Portsmouth, Berkley & Suffolk Water Company, and we also purchased from that company Lake Burnt Mills, and we can deliver into the City of Norfolk annually all the water we need at this time. We take the water fifty per cent from Lake Prince and fifty per cent from Moore's Bridges at this time—not precisely in this division, but nearly so, for economic reasons in distributing it. We have to pump to Virginia Beach. We have to pump to Money Point and we have to pump to the Naval Base, and that service is so scattered, together with the City's distribution system in the City of Norfolk, that we cannot render the

page 161 } service from either one of the two stations without a large outlay for water main which the Council does not see fit to make. Until it is provided, we will have to continue pumping from both stations. The original works were built in 1872; Lake Prince was built in 1922, about—fifty years apart. There is practically nothing left of the original works except Lake Wright, a very small waterway embracing a few acres of land. The buildings have gone and the pumps have gone and the four dams are gone. Lake Joyce is no longer useful, Lake Bradford is no longer useful and Lake Taylor is no longer useful, and the original system, which was built with a bond issue of \$500,000 in 1872, to provide these lakes, has practically disappeared. In the meantime, Norfolk County Water Company was built in the neighborhood of 1900 or 1903, I don't recall which, but about 1900, practically surrounding Norfolk with its activities. The City of Norfolk, in 1918 or 1917, leased these works for \$200,000

a year, and subsequently purchased them at a price of \$850,000 to \$900,000. It likewise, as stated, purchased the P. W. & S. Works in Berkley and South Norfolk for something near \$425,000.

The depreciation that Mr. Sebrell has asked me about is that which ordinary maintenance, operation of plant, with the exercise of intelligence and care, cannot put back into the plant. It is lost by wear and rust which ordinary maintenance will not offset. The pumps are gone; some
page 162 } that were installed in 1886 are obsolete and are used only as stand-by pumps. In 1922 we rebuilt that station in its entirety. There is not a vestige of the old plant that is left with the exception of these two particular pumps I will allude to, Worthington pumps, which were magnificent pumps in their day, but in the improvement of machinery in 1922 we found we could retire them and pay \$60,000 for a new pump which saves in operation a large part of interest and sinking fund. The pipe lines deteriorate from within and without. Cast iron is generally supposed to be very durable, almost without deterioration, and lasts for a large number of years. In our system that is not the case. I have an example here of the original twelve inch pipe that was laid in 1872 or 1873. It is one of the few pieces of the original property that is useful today. It was originally at least half inch or more in thickness, and the deterioration of the iron from the action of the water on the inside has reduced it in some places to more than fifty per cent of metallic iron to oxide iron, and you have nothing but carbon which I can chisel out with my knife. That means that the pressure that it originally carried of one hundred pounds to the square inch it will not carry that pressure today, and when I was called upon by the Fire Underwriters to increase our pressure in the City of Norfolk, we were obliged to say that we cannot do it until that pipe is replaced in the system because
page 163 } we had blown pieces of pipe out as big at times as your leg and at other times smaller. The difference between that piece of pipe and this is evident; it has been laid in the last few years, and gives one idea of permanent character of the metal. That is a piece of pipe just a little larger than that, a little bit thicker, that shows metallic iron all the way through, and it looks to be durable as time. It is not so because we have an action by our water that we do not know the exact chemical action of; I can only state that it is the same as electrolysis. Electrolysis generally takes place on the outside of the pipe but reduces the metallic iron to a carbon similar to this you see there on the inside of the pipe. That pipe is not strong enough to endure what we

would like to subject it to in the system today. It is a little over sixty years old, and I put the life of cast iron in our system not to exceed seventy years. I put the life of wood pipe in our system at considerably less, of course, than cast iron pipe. It not only is subjected to rot, but we have found deterioration in our wood pipes from termites which people, I think, generally have construed as rot, resulting in very serious damage. There is a sample of the Lake Prince line laid in 1922. The termites have taken the interior of the wood, leaving the exterior and the inner portion that is damp and wet, but they eat from water to air, and that blows, and

it means that we have to take it out. I put the
 page 164 } deterioration in wood pipe down at six per cent
 a year and have found some other localities, like
 the North Landing Line, where we have a pipe that was laid
 twenty years ago, that is utterly worthless to us because of
 the deterioration in the joints—some of the wood is perfectly
 sound, some of the bands are perfectly sound, but, as a whole,
 we had to abandon it. We have other items of depreciation
 in our plant in addition to cast iron pipe, which numerous
 experts, in addition to our local talent, have claimed seventy
 years as the life of cast iron pipe, which was the life given
 to the Berkley distribution system by such authority as Allen
 Hazen and Dabney Maury. In addition to the deterioration
 influence, obsolescence has a great deal to do with it. By
 obsolescence I mean the growth of the community to require
 a larger pipe than that laid by the water authorities or by
 the action of the water completely closing the line. I have
 here a photograph of specimens of pipe taken from Norfolk
 distribution system that are twenty years old. The oldest
 piece of pipe taken from the distribution system and photo-
 graphed at that time was twenty-four years. You will see
 some of those pipes are entirely closed by oxidation of the
 iron and sedimentation that takes place around that oxidation
 until it has to be taken out. We have tried painting and have
 not had much success, though it is possible in some instances
 to clean those pipes and make them serve on. In these cases
 and other cases in the City of Norfolk the pipes were removed

and larger pipes were placed so that between ob-
 page 165 }solesence and depreciation I think sixty years life,
 1.43 per cent a year, is the maximum that should
 be given for iron pipe in the Norfolk system. I have taken
 other items comprising the system, such as filters. The filtra-
 tion plant that we built in 1900 has been entirely rebuilt and
 practically abandoned in 1920. We have again rebuilt these
 same filters so that the depreciation on the filter plant, with
 the exception of the building, is very much in excess of that

which is generally understood for property of that kind. The building I have given forty years' life, because that is longer than any of them erected by our predecessors in office in Norfolk have given. If you take obsolescence again, the plant built in 1872, the original line to Norfolk, was twelve inches; in 1884, twelve years after, they had to enlarge that to twenty-four inches. In 1903, which was less than twenty years, they had to put in a thirty (30) inch line, and we were not able, without the aid of Norfolk County, to render the service that was required of us during the war, and the Lake Prince supply was an important factor. So obsolescence, as well as depreciation, takes a great toll of the property of Norfolk. There are other factors, like the terrain, the geography of Norfolk, the topography and the composition of the soil that are peculiarly severe and hard on properties of this kind. We have water mains right in the City of Norfolk, through
 coves that have been filled up and made streets,
 page 166 } that are so far down we can't get to them. The
 streets have been filled over and over, and when
 these mains break, the chances are that we will have to abandon them because they are so deep under the surface. All of these factors make for deterioration in an unusual way in Norfolk.

The sum of money today that is put aside for replacement—and by replacement I mean over and above that which maintenance will keep into the plant and preserve the present plant intact,—is in excess of \$160,000 a year. On that basis we are not creating capital to the relation of credit and investment. The City of Norfolk, since 1872, has spent an average of \$200,000 a year for its water property. Or, stated in another way, since 1922, when Lake Prince was built, we have spent \$500,000 a year to keep up with the needs of the Water Department. So, in stating \$160,000 a year would be required to keep the plant intact, in my opinion that is not over-stated. I think that is borne out by items of the present water properties, with each item listed as to its cost and as to the life that I think we can with assurance state that it is good for, and I arrive at a figure of \$210,000 instead of \$160,000 for depreciation.

Q. As I understand, Mr. Taylor, from your knowledge of the deterioration of water properties, particularly our properties, you figure that \$210,000 annually is the proper amount to be charged off for depreciation?

A. I do.

page 167 } The Court: I am willing to continue as long as
 you wish, but it is five o'clock.

Mr. Sebrell: We have to come back anyhow, and if it suits you we will adjourn until tomorrow.

Note: Thereupon the court adjourned until tomorrow morning, October 30, 1934, at 10 o'clock.

MORNING SESSION.

Suffolk, Virginia, October 30, 1934.

The court met pursuant to adjournment of yesterday.

Present: The same parties as heretofore noted.

WALTER H. TAYLOR,

a witness for the City of Norfolk, takes the stand for further direct examination, and testifies as follows:

Witness: Before the attorneys ask me a question, I would like to make a statement that my attention has been called that I stated sixty-two feet, or thereabouts, between taps in the county; I should have said 620.

page 168 } By Mr. Sebrell:

Q. Mr. Taylor, when we adjourned on yesterday we were talking about the depreciation, and you had made the statement that from your knowledge of the condition of the plant a proper amount of depreciation for the property annually would be about \$210,000. You were referring to the properties as they exist at the time?

A. Yes.

Q. Mr. Taylor, I am asking you—and I don't know whether you were advised about it, or not, but if you know you can give me the information, that the bonded indebtedness which Mr. Breeden testified to yesterday as being the outstanding indebtedness covered by water bonds, does that represent the total indebtedness from the original? That is, how many bonds have been retired, do you know?

A. I have a statement to that effect from the City Auditor. In round numbers, the original bond issue in 1872, of \$500,000 was refunded in May, 1931, and a new issue of \$400,000—\$100,000 being retired, and the \$400,000 refunding bonds were cancelled December 31, 1931, and to my knowledge that is the extent of the bond issue retirements that have been made by the City of Norfolk to the present day for the Water Department.

Q. Then some of the outstanding bonds, while they bear the

period of thirty years, are refunding bonds that covered prior bond issues?

page 169 } A. Yes.

Q. Now, Mr. Taylor, I think it is practically covered by the contract, but in the water that we furnish to outside sources, South Norfolk, Norfolk County and Princess Anne, is that out of our surplus supply, or not?

A. Yes.

Q. And it is restricted to surplus, and whenever we do not have the water we do not furnish it?

A. That is correct.

CROSS EXAMINATION.

By Mr. Godwin:

Q. How many places do you furnish water to that are owned by the Federal Government?

A. By the Federal Government?

Q. Yes.

A. I could not tell you offhand. We furnish the Naval Base a large quantity of water, and we furnish a small quantity of water at St. Helena, and we furnish the Army Base, if you can construe that as Federal property. Those are the three major ones. We furnish Port Norfolk and the Federal buildings in Norfolk.

Q. Will you submit in this record a statement of all of the water sold to the Federal Government and its reservations for the years in question here?

A. Yes. We will have to work that up.

Q. That amount was not included at all in this page 170 } water that you reported as sold to outside consumers, was it?

A. Where it was outside. All these I have enumerated are in the corporate limits of the City of Norfolk.

Q. They are on property owned by the Federal Government?

A. Yes.

Q. They are not subject to the jurisdiction of the State of Virginia?

A. You know more about that.

Q. I would like to get that amount for each year in question you have sold water to the Federal Government or to parties living on Federal reservations?

Mr. Sebrell: Now, let us see if he has that information. I do not understand you want a continuance of this case, but that testimony could not be available today if it is material.

Witness: I can't possibly get it today.

Mr. Godwin: Your Honor, I am in this position: The only thing about this has to come from these parties, and they have to furnish the information. I have not the records of those amounts. They have furnished a statement that they have sold to outside consumers only certain amounts of water.

The Court: Doesn't that refer to those outside of the limits of the City of Norfolk? Why is the United States Post Office in Norfolk any different from Miller-Rhoades & Swartz?

page 171 } Mr. Godwin: Your Honor, you evidently have not read the case of Warwick County against Newport News, in which they based the amount of water sold outside to those places, sold on Federal reservations—

Mr. Sebrell: That was outside of the City of Newport News.

The Court: I have read it, but I did not read it looking at it in that way, but I would be surprised if the Supreme Court has held that if a place is in the City of Norfolk and owned by the Government, that the City is not obligated to furnish it water.

Mr. Godwin: Its duty to furnish water and its exemption from taxation are two different things.

The Court: What are you talking about?

Mr. Godwin: I am talking about the case of *Warwick County* against *City of Newport News*.

The Court: What are you referring to, to establish the fact that it is not the duty of the City of furnish an enterprise because it is owned by the Government? Is it any different from furnishing to any other owner?

Mr. Godwin: I will read you: "The record shows that as authorized by the Act approved March 25, 1926, the City of Newport News has acquired the property, operates and intends to continue the water supply business outside of the City in the Counties of Warwick, Elizabeth City, page 172 } the City of Hampton, the Towns of Phoebus and Buckroe Beach, numerous suburban settlements, and to supply water to United States Government camps, forts and stations, and to sell water to dealers for the use of ships in the harbors of the James River and Hampton Roads." And the Court of Appeals included the amount of water sold to outside consumers and the amount of water sold to ships.

Mr. Sebrell: Langley Field and these reservations are outside of the City of Newport News.

The Court: Mr. Taylor, how long would it take to get those facts?

Mr. Taylor: It would take a day, I suppose, to get them.

We haven't them here but would have to go back to Norfolk.

The Court: I thought you could get it and send it back.

Mr. Taylor: We can submit it in writing.

Note: It was stated by Mr. Blivin it would take two days to go over it.

Mr. Godwin: Your Honor has so many records to go through, I think we will have ample time.

The Court: Don't talk about ample time, but let's go along in this case.

Mr. Godwin: I would like to ask that be introduced as evidence.

The Court: All right.

By Mr. Godwin:

Q. Mr. Taylor, you have in Norfolk large shipping interests, do you not?

A. Yes.

Q. You have dealers there who buy water and sell to these various ships, do you not?

A. Yes.

Q. Does the City sell directly to ships?

A. We sell to transportation companies, and we sell to Norfolk & Western, and it, in turn, uses it aboard vessels that go beyond the harbor.

Q. Will you make a statement of the amount of water sold during these years in question to the various dealers in water who are selling to ships and to consumers outside of the City of Norfolk?

A. I cannot make you such a statement. We have no knowledge of the amount of water sold to ships.

Q. Those dealers are practically dealing in water for ships, are they not?

A. No. They are dealers in water for other reasons, but I do not know the percentage.

Q. Who are some of the dealers?

A. Joseph Clark is the biggest one I know of at this time.

Q. Is Wood Towing Company?

page 174 } A. I think that they do.

Q. All of that water is used in their tugboats in navigable water, or is it used for supplying ships?

A. I cannot tell how much they use or how much they sell.

Q. Will you make a statement and put it in the record showing the amount of water sold to these people who are dealing in water and selling to outside consumers?

A. I don't know who they are.

Mr. Sebrell: If your Honor please, we are here to try this case. We have brought our books and they are open for their inspection, and the attorney for the Commonwealth has been told that he could examine any book that he pleases of the City of Norfolk and get any information that he wants. A lot of that evidence that he wants is to be put in a statement to be filed after the case has been concluded and with no chance to put the witness back on the stand to explain it. Here are people who are residents of Norfolk City; they are industries of Norfolk City, and they are furnished water as any other citizen of Norfolk is furnished water. There may be some manufacturing plant in the City of Norfolk that is sending its manufactured stuff out to the world, but they are buying water as an industry of the City of Norfolk. To say people operating towboats and paying hundreds of
 page 175 } dollars shall be denied water like other government functions, it seems to me what counsel is asking for is something which is not material to this case, and that this case should not be held up and the record be encumbered and have inserted into it, after the trial, things which can have no material bearing on the consideration of this case.

Mr. Godwin: I am asking for what was made a test in the other case.

Mr. Sebrell: It was not made a test in the other case.

Witness: If we had had knowledge that that information would be required here, we could have revealed it. There is a difference between a manufacturing company converting water into steam, and then it goes into air, and they are both beyond the City limits.

The Court: Let me see the case here a minute.

Note: A law book is handed to the court.

The Court: I think, gentlemen, that this opinion in the Newport News case holds that if the amount sold to those outside of the city is of some moment, they are liable to pay taxes. If it is incident to their business, they are not. I do not think there is any justification in going into an inquiry into any water sold within *in* the corporate limits of the City.

Mr. Godwin: Does your Honor hold that these dealers selling all that water, that it is not a part of it?

page 176 } The Court: I say that those selling it in the City. I think if you can show that it was a large amount and it was going over the country and being used in other products, there might be something in it, but I do not think you can say the Water Department is violating its duty

to the citizens, or it is violating its right and privileges, to sell water to people inside of the City for legitimate use. I do not think that is making any profit out of it.

Mr. Godwin: In the Richmond case, it went so far as to say that it was sold to a railroad company.

The Court: The very reason for the Richmond case was the C. & O. shops were outside of the corporate limits.

Mr. Godwin: In the Newport News case, the court went on to show that practically a large part of the water was either sold outside of the city or it was sold to be used outside of the City and went outside of the City, and the court so stated in its opinion, and they proved in that case the amount of water that was sold to these dealers to be sold to ships, and they even went so far as to say that the dealers were making a profit in selling it outside. The Newport News situation is the same as you have here. I do not see any difference. You have ship dealers and tugboat companies in

Newport News and you have them in Norfolk.

page 177 } The Court: It is inconceivable to me, and I do not believe the Court of Appeals intended to hold, that water delivered in the regular way to one of the business concerns of the City who is dealing in ship chandlery and ships generally, to fill the tanks up with it, would go to make the City liable. It would destroy the commerce of your port. I will not hold that. The City would have to say "I will not do it".

Mr. Godwin: It is not a question of whether or not they will do it, but whether they are taxable on it.

The Court: I do not think that they are taxable on it.

Mr. Godwin: The Court of Appeals, in 159 Virginia, in an opinion written by Judge Chinn, went further. Judge Gregory tried this case and said the City was not taxable.

The Court: What case?

Mr. Godwin: *Warwick County against the City of Newport News*, 153 Virginia.

The Court: Gregory tried it?

Mr. Godwin: Yes; he was designated to come and try it. He held it was not taxable, and the Court of Appeals, in an opinion written by Judge Prentis, says that it is. Now, in 159 Virginia Judge Chinn, in delivering the opinion of the court, not only sustained everything in there but page 178 } goes further.

The Court: How much further?

Mr. Godwin: He made an entirely different test as to whether they were making money, and went further than Judge Prentis.

The Court: My view is in selling it to people in the City,

in the regular course of business, that is not in any sense placing yourself outside of the pale of protection which the law gives.

Mr. Godwin: I want to put myself on record. When we tried to assess the property of the City of Norfolk, no information would be given. What information we got we had to get it and work it, and no one came from the City, and Mr. Beale and Mr. Petty will testify that they refused to give them the information. When this case came up and the bill of particulars was filed, I sat down and wrote asking for this information, which we did not get.

The Court: As to what?

Mr. Godwin: As to water consumed outside and bonded indebtedness.

Mr. Sebrell: But not as to water consumed outside of the City.

Mr. Godwin: On October 13th I again wrote a letter for the information, and asked for the various financial statements, and we went so far as to state unless they came page 179 } we would have to ask for a subpoena *duces tecum*.

The Court: If you had asked for this information that you asked Mr. Taylor about in this letter, let me see it.

Mr. Godwin: I have asked for all water to consumers.

The Court: If you asked for it you ought to have it.

Mr. Godwin: I do not think Mr. Sebrell denies I wrote the letter.

Mr. Sebrell: I deny you wrote asking for information as to water sold to Clark & Company.

Mr. Godwin: I asked for consumers outside.

The Court: I think you are entitled to have for consumers outside.

Mr. Godwin: Does the court hold I am not permitted to show the amount of water sold to the various Federal reservations?

The Court: I do not say you cannot show it if you can, but my view is it does not have anything to do with the ultimate disposition of this case.

Mr. Godwin: There can be no question about the fact that the City of Norfolk, or State of Virginia, has nothing to do with the Federal reservation, and it has been recently held as to the Chamberlin Hotel.

The Court: I do not believe the fact that the United States Government owns it changes its position in respect to having water served it any more than because I own a piece of property and the City of Norfolk hasn't anything to do with me only as to health

and police authority and things of that kind. I own my property independently, just like the United States Government does, but it does not mean to say that Norfolk City will not furnish water to those living on the reservation within the City of Norfolk. I do not believe that there is any such law as that, and I am not going to hold it, anyhow.

Mr. Godwin: I am still asking for that information. The books were produced here yesterday. I imagine it would take an endless length of time for Mr. Taylor, if I ask him the question, to go to these books and to tell us from his books how much he sold.

Mr. Taylor: It is not on these books, and it cannot be found.

By Mr. Godwin:

Q. It is on the water books somewhere?

A. No, it is not.

Q. How much you sold consumers?

A. For use beyond the city limits.

Q. Haven't you an account with the Federal Government?

A. Yes, we have an account with the Federal Government at the Naval Base, but how do I know what they put aboard ship?

Q. You have an account of all the water sold page 181 } to the Federal Government in these various years,
in these various places of activity, have you not?

A. Yes, but that happens to be one of many. I cannot tell you, and nobody can tell you, what percentage of water sold to the Norfolk Ferry Company is used while the ferry boat is in the slip and what is used on the Portsmouth side.

Q. Do you sell to the Norfolk Ferry Company?

A. Yes.

Q. And that is used to run boats between Norfolk and Portsmouth?

A. Yes.

Q. And between Norfolk and Berkley?

A. I don't know whether it is, or not.

Mr. Sebrell: Berkley is a part of Norfolk.

By Mr. Godwin:

Q. You sell to Wood Towing Company, which operates tug-boats through navigable water, and who are also dealers in water and sell to ships?

A. Yes.

Q. And the same is true of other companies?

A. Yes.

Q. I want to ask you for a statement of all waters sold to these dealers selling outside and used outside?

A. We can't do that. We can tell we sell to Washington Steamboat Company, but what they use in Norfolk and what on the way to Washington, I don't know.

page 182 } Q. You sell to the Washington Steamboat Line, and that runs from Norfolk to Washington?

A. Yes.

Q. And you sell to the New York Steamship Line, which runs boats from Norfolk to New York?

A. Yes.

Q. And you sell to ships in foreign waters?

A. No, we do not sell to those.

Q. Do you deliver water to them at any of their piers—the Tidewater Terminals?

A. Yes, and they sell.

Q. The Tidewater Terminals is the one that sells to the ships?

Mr. Sebrell: He doesn't know what the Tidewater Terminals Company does.

Mr. Godwin: If you will ask counsel to stop prompting the witness—

Mr. Sebrell: Your Honor has passed on this question.

The Court: I want him to get everything in the record that the witness knows.

By Mr. Godwin:

Q. You sell to Tidewater Terminals, and that is on a Federal reservation and Federal property, is it not?

A. Yes.

Q. And they, in turn, sell to the various steamship lines in coastal and foreign trade, do they not?

page 183 } A. They may and they may not. I don't know.

Q. Do you sell to other terminal facilities in the City of Norfolk, such as Southgate Terminals and these various other terminals who sell it for foreign ships?

A. We sell to any one in the City of Norfolk who apply for it, and make a contract for it. We do not know how they use the water.

Q. Now, Mr. Taylor, I want you to submit to the court a statement of the amount of water purchased by the Federal Government in all of its activities for the years in question in these tax proceedings. In addition, I want you to furnish to the court a statement of the water purchased by dealers in water sold to boat lines and to those operating boat lines?

A. I can't do it. I don't know who they are.

Q. You have an individual account against each party, haven't you?

A. We have an individual account against everybody who takes water?

Q. You have?

A. Yes.

Q. That record will show what the Wood Towing Company's account is with you?

A. Yes, but I have no knowledge that they sell water.

Q. As a matter of fact, the Wood Towing Company has only one small building at the foot of Roanoke page 184 } dock; isn't that so?

A. I don't know.

Q. Then you cannot furnish that statement?

A. No.

Q. Can you furnish a statement of Wood Towing Company's account?

A. Yes.

Q. Can you furnish a statement of the accounts of all the others?

A. If you tell me who they are.

Q. How long have you lived in Norfolk?

A. Sixty-two years.

Q. Don't you know generally a large number of those who are selling water to consumers outside of the City of Norfolk?

A. I know from hearsay.

Q. Don't you think that your auditor's office could mighty easy furnish a statement of those dealings in water?

A. I will furnish anything the Judge says that I have in my possession.

Mr. Godwin: Your Honor, I want the Court to pass upon whether or not he will furnish the information.

The Court: If he can furnish it during the trial, all right, but I will not tie it up on account of that.

Mr. Godwin: Then I will ask him to have his books brought in here and let my auditors determine it. page 185 }

The Court: If you can do it during the trial.

Mr. Godwin: It will make the trial last a week.

The Court: No, it will not. I hold that it is not relevant.

Mr. Godwin: I insist that it is important, and it is one of the determining factors whether a considerable amount of water has been sold to consumers outside, and it is important and relevant.

The Court: I do not think it is important testimony, and I will not require the witness to produce it.

By Mr. Godwin:

Q. Now, Mr. Taylor, in this account that has been set up as receipts in the Water Department, how much of that has been paid or charged to the City of Norfolk for fire hydrants?

A. None in the City of Norfolk. In the City of South Norfolk and in the County of Norfolk we charge the City of South Norfolk for fire hydrants, and we charge the County of Norfolk for fire hydrants.

Q. How much do you charge them for fire hydrants?

A. You got that yesterday from the auditors; \$541.00 a year.

Q. I mean how much does that amount to per hydrant? You have a special rate for hydrants, haven't you?

A. I think \$90 per hydrant.

Mr. Sebrell: That was in the contract to be filed yesterday.

The Court: If anybody has the information, page 186 } just hand it out.

Mr. Sebrell: We are trying to get it now. I thought it was in the contract to be filed yesterday.

The Court: Hand it to Mr. Taylor.

Note: The paper is handed to witness.

Witness: We have in South Norfolk 67 fire hydrants, and the amount raised is \$4,295.16. In Norfolk County we have 44 hydrants, and the amount paid per year by the County is \$4,000.

By Mr. Godwin:

Q. That is one hundred dollars per year?

A. No, it is not. About ninety dollars per year.

Q. How many fire hydrants have you in the City of Norfolk?

A. Between twelve hundred and thirteen hundred.

Q. And the City makes no charge against itself for those fire hydrants at all?

A. No.

Q. And your Water Department is about the only Water Department in this section that does not have a charge against the City for its fire hydrants, is it not?

A. If you say so it must be so, but I do not know of my own knowledge.

Q. You know that Portsmouth doesn't do it, don't you?

A. I do not know it of my own knowledge.

page 187 } Q. Now, you make no charge against the City for water used by the City, do you?

A. Yes.

Q. Whereabouts?

A. Every building is metered, every school building is metered, every public building is metered. We do not make a charge against the City for the use of water used to extinguish fires, or for the use of water used to flush the streets, or for the use of water used to clean our sewers.

Q. That much the City gets free of charge out of this set-up?

A. That is right.

Q. Now, you spoke just now of the bond issues of the City of Norfolk for water purposes: How much did you state the book value of your water facilities to be?

A. I have not stated that.

Q. How much were they stated to be?

A. They were stated to be \$11,800,000 to \$11,900,000.

Q. Now, Mr. Taylor, against that eleven million and some dollars in 1931, at the end of that fiscal year you had a bonded indebtedness outstanding of \$9,666,772.65, as shown by your audit; is that correct?

A. I don't know what you are reading from.

Q. I am reading from your audit of 1931?

A. If the audit said that, I believe it to be so.

page 188 } Mr. Sebrell: I do not want to object, but is it proper in this examination to have the Director of Public Works determine whether the Auditor's report is correct? You can simply say what the books show.

By Mr. Godwin:

Q. You are the active head of the department?

Mr. Sebrell: He is not the head of the bookkeeping department.

By Mr. Godwin:

Q. Now, in the audit of your books December 31, 1932, on page 39—

Mr. Godwin: He testified what bonds had been paid off, in response to your question?

Mr. Sebrell: Water bonds.

By Mr. Godwin:

Q. Your audit shows that you only had at that time water bonds amounting to \$6,417,625.24.

Mr. Sebrell: What page are you reading from?

Mr. Godwin: Page 39.

Mr. Sebrell: I read \$8,974—

Mr. Godwin: (Interposing) Excuse me. That is a mistake. Just strike that out.

By Mr. Godwin:

Q. I see that the water bonds outstanding were \$8,974,-771.27—approximately a million dollars under what they were the preceding year.

page 189 } Mr. Sebrell: Why do you state that? I submit,
if your Honor please, the statement counsel is
making is not borne out by the facts.

The Court: The witness may not agree with him.

Mr. Sebrell: My objection is, if your Honor please, that is a bookkeeping matter; that is for the Auditor and not for the Engineer.

The Court: I think the witness can state if he is not familiar with it that he does not have to testify.

Witness: I have no more knowledge of it than what this book states.

By Mr. Godwin:

Q. You did testify about the bonds that had been retired in the Water Department, did you not?

A. From a statement of the City Auditor.

Q. I want to ask you doesn't the auditor for the year 1932 show that the amount of water bonds outstanding was \$8,974,-771.27?

A. I am just trying to see what statement this is (looking at book). I want to say, Judge, to read out of this book a single item, without reading the book through, you cannot get a complete statement of any account in the City of Norfolk—that you must read it with the others. I have before me a statement which purports to be a statement of the City Auditor of all outstanding bonds at the end of 1932, and in that statement is water bonds outstanding to the extent
page 190 } of \$8,974,771.27.

Mr. Sebrell: This is the position I am taking: Of course this witness can answer anything he knows. He asked if this does not show that. On yesterday I recall, while the Auditor was on the stand, the question was asked about the bonds and water bonds. He stated certain bonds are designated water bonds and certain general bonds, and he did describe certain bonds described as water bonds. It is confusing to ask this

witness if a certain item does not say so much and so much. The witness doesn't know whether that is all water bonds or not.

The Court: I have already ruled that he doesn't have to answer if he doesn't want to, but if he wants to answer I will not stop him.

Mr. Godwin: This is along the line of depreciation. Mr. Taylor has testified to depreciation, and I do not think the witness should be permitted to testify to all in the City of Norfolk.

By Mr. Godwin:

Q. After those bonds had been paid down to approximately eight million dollars—

A. (Interposing) They have not been paid down to that amount.

Q. To the figure you just mentioned?

A. I didn't mention any such figure.

page 191 } Q. You still add in your sinking fund and reserve—

Mr. Sebrell: (Interposing) You are stating what is in the sinking fund, and I submit that that is not a question in this case.

Mr. Godwin: The witness is on cross examination.

The Court: If he is making the statement in the form of a question, the record will show it. He is asking whether it is true, or not, and I think he has that right.

By Mr. Godwin:

Q. Doesn't your audit for the year 1932, on page 47, show that in water special bonds the sinking fund earned and accrued amounted to \$1,212,113.41?

Mr. Sebrell: Mr. Taylor, tell him what you know about it. If all you know about it is what you see about it, he doesn't want to examine you as to the book. If you have any knowledge about it, tell him, but if you don't know anything other than the books show, you do not have to say it.

Mr. Godwin: This is the first time I have known a lawyer telling the witness what to say.

Witness: Nobody can read this right without reading all of it. Norfolk City has close to nine million dollars outstanding of water bonds.

page 192 } By Mr. Godwin:

Q. Doesn't you audit show that sinking fund to these special bonds?

Mr. Sebrell: The audit shows, and the court can tell just as much as this witness can tell. He is not an expert auditor, and until you qualify him as a bookkeeper, how can he tell what the audit shows?

By Mr. Godwin:

Q. Your properties of the value of nearly 12 million dollars, which have been paid for out of capital funds, have by this sinking fund been paid down to about eight and a half million dollars, haven't they?

A. No.

Mr. Sebrell: If your Honor please, I have some regard for time and some regard for the record. Every statement that counsel is interrogating the witness about was stated by the Auditor yesterday. He stated the amount of bonds outstanding. That is from the man in charge of the bookkeeping and the audits of the City and the general certified public accountant and stated the amount of bonded indebtedness with regard to these water obligations. Now, can any inquiry or anything that they can bring out from the witness enlarge or qualify or contradict that statement? If so, this testimony is material; otherwise, it encumbers the record.

The Court: He is evidently, I assume page 193 } trying to show some contradiction between Mr.

Taylor and the Auditor. Otherwise it is a useless waste of time to ask what the audit shows. If Mr. Taylor wants to answer, I don't see why he hasn't the right. If he can prove the audit is wrong by Mr. Taylor, I think he has the right to do it.

Mr. Sebrell: Mr. Taylor doesn't hear your Honor's ruling, and he thinks he has to answer every question.

By Mr. Godwin:

Q. Mr. Taylor, with the amount of bond issues that have been retired, approximately leaves eight and a half million outstanding, does it not?

A. No, it does not. It is nearer nine.

Q. The amount shown in the audit. With the sinking fund and interest, you have in special water bond account, leaves you only owing approximately seven and a half million, and you have nearly a twelve million asset; isn't that true?

A. I have not said, and no one else has said, that we have a twelve million dollar asset.

Q. Approximately twelve million?

A. No, not approximately twelve million.

The Court: Mr. Godwin, you understand you can argue any facts that appear in these audits that have been filed.

If they are in the issue you can depend on them page 194 } as true and argue it.

Mr. Godwin: All right.

By Mr. Godwin:

Q. Norfolk, by reason of having grown, is constantly requiring capital outlay to increase water mains and things of that sort, is it not?

A. Yes.

Q. Out of your capital fund you extend lines?

A. Yes.

Q. And in your ordinary expenses, that goes to the maintenance and upkeep of your plants and property; that is right, is it not?

A. Yes.

Q. Now, these audits and these statements that you have filed along—I mean the audit and the statements you filed along with the audits,—were accepted by the City Council, were they not?

A. How do you mean accepted by the City Council?

Q. Whenever they have an audit of the City books, the City Council has to accept that audit before it becomes final, doesn't it?

A. They receive and file them.

Q. And all these have been received and filed?

A. No, not all these books you are talking about. The audit has.

Q. How about the statement made by you to the City Council?
page 195 } A. I did not make any statement to the City Council.

Q. Didn't you make each year a report to the City Manager?

A. Yes, I made it to the City Manager.

Q. And the facts contained in all those reports you made to the City Manager in reference to the Water Department and the other department of Public Works are true, to the best of your knowledge and belief, are they not?

A. Yes.

Q. Mr. Taylor, do you know whether or not the City of Norfolk has, according to the Auditor's recommendation, attempted to tax the Portsmouth ferries for their operations from Norfolk to Portsmouth?

A. No, I don't know it.

Q. Now, on yesterday you testified that you had to run 620

feet of pipe; did you say 620 feet of pipe to the homes of residents in the county?

A. On an average.

Q. Now, who pays for the running of that pipe from your line to the residences?

A. The applicant.

Q. Therefore it does not cost you anything additional to put those pipe lines to the applicant's home, because he pays for it, doesn't he?

A. That does not follow at all.

page 196 } Mr. Sebrell: He is not talking about the pipe line, but the main.

Witness: From the main to the residence. He is charged if in the City of Norfolk, and in the County, and the applicant pays for it in both instances.

By Mr. Godwin:

Q. The tap fee is paid by the applicant?

A. That is a part of the expense I just mentioned.

Q. In other words, when a man in the country gets water, he does it just like the man does in the city, by building to your main line?

A. The necessary house connection.

Q. And then you charge him one dollar for tapping, if he lives in the city, and two dollars for tapping if he lives in the county; isn't that right?

A. Yes.

Q. Now, in reference to this Virginia Beach contract, it is said here that you all were furnishing Virginia Beach water cheaper than you were furnishing your own consumers water; that is due to the fact that all you do is to deliver the water to Virginia Beach, and Virginia Beach then re-sells it to the consumers?

A. That is right, and we do that frequently.

Q. And when you get your price per thousand gallons of water without maintaining your lines in Virginia Beach, without having to collect the bills and charge off
page 197 } those uncollected bills, that is a fair price for water, is it?

A. That price is more than offset by the loss that we have by pumping the water from the station and the fourteen miles we have to run to make that service.

Q. What do you get a million gallons of water furnished Virginia Beach?

A. They sell it by the thousand gallons at ten cents a

thousand gallons at this time. That is the lowest rate to any domestic consumer. It is one hundred dollars a million.

By Mr. Sebrell:

Q. Ten thousand dollars for a million, wouldn't it be?

A. No.

Q. It is one hundred dollars for a million gallons?

A. Yes.

By Mr. Godwin:

Q. Now, Mr. Taylor, in your report that you made to the City Manager of Norfolk December 31, 1932, you showed that the cost per million gallons of water is \$45.23, didn't you?

A. As it leaves the pumping station.

Q. And you pump to Virginia Beach from your Princess Anne station?

A. Fourteen miles.

Q. Which is practically as close, if not closer than, down town Norfolk?

A. No, it is further than down town Norfolk.

Q. It is not over a mile or two difference, is it?
page 198 } A. Yes. The Moore's Bridge pumping station to down town Norfolk is about five miles and to Virginia Beach it is nearer fifteen.

Q. Is your pumping station in Princess Anne County down near Sam Jones' place, the President of the Machine Works in Berkley, that he owns in Norfolk County?

A. It is a mile nearer Norfolk than that.

Q. You say it is about five miles from there to down town Norfolk?

A. It is about five miles. It depends on what you call down town Norfolk.

Q. Is it as far as pumping to Ocean View?

A. It is further than pumping to Ocean View, yes.

Q. Is it as far as pumping to the Naval Base?

A. It is probably about the same distance as pumping to the Naval Base.

Q. The City of Norfolk issued bonds to put in that improvement to Virginia Beach, did it not?

A. It did.

Q. And those bonds are so issued that they will retire themselves in thirty years, are they not?

A. I think so.

Q. Is that an iron pipe line down there?

A. In a large part. There is some cement.

Q. You testified yesterday that the probable duration or life of that pipe is around seventy years?
page 199 } A. Iron pipe, yes.

Q. Therefore, instead of thirty years of interest that Virginia Beach is paying to the City of Norfolk, it will pay for the pipe and give you sixty years additional, will it not?

A. It will not. It is nothing like that. The Town of Virginia Beach pays interest to the end of this year, and then we pay water at a certain rate per gallon, but long before the seventy years, as stated by you, that line will be obsolete.

Q. It is an increase in price after they stop paying the interest?

A. Yes.

Q. And that increase will take care of the interest situation?

A. Approximately.

Q. Now, over in South Norfolk you bought out their water facilities, didn't you?

A. It didn't belong to the City of South Norfolk.

Q. To whom did it belong?

A. Portsmouth, Berkley & Suffolk Water Works.

Q. The Portsmouth, Berkley & Suffolk Water Works was furnishing water to the Town of South Norfolk, was it not?

A. That is correct.

Q. And it was furnishing water to Berkley before you all took it into your corporate limits, wasn't it?
page 200 } A. That is correct.

Q. And when you took it into you corporate limits, you then hooked up with the City supply, didn't you?

A. Not immediately, but we did at a certain date, which I might tell you from the records. It was long after it was taken into the corporate limits, many years, before we undertook to furnish our citizens of Berkley with water from the City Water Works.

Q. They could get water from Berkley; they were getting water from Berkley?

A. Who could?

Q. The people in Berkley could get water from the Portsmouth Berkley Suffolk Water Company, which used to be and now is the Portsmouth Company?

A. Yes, they were getting water there at the time we took them over, and it is no doubt true that they could have gotten water from them if we had not taken them over.

Q. Why did you furnish South Norfolk, or go and buy over their water works facilities, when they were being furnished water by the City of Portsmouth?

A. Because in acquiring the Berkley distribution system of

the Portsmouth Berkley & Suffolk Water Company we purchased all the supplies, all facilities for sending them water, and Portsmouth could not sell water through our system without paying Norfolk, and it was not a practical proposition for

Portsmouth to extend other mains to South Norfolk } page 201 } folk. It was not a practical proposition for Norfolk to buy water at the edge of its town and sell it to Portsmouth at the edge of its town. It was the most practical to acquire all the distribution system of the P. B. & S. on that side of the town.

Q. Therefore, South Norfolk was practically forced to take its water from Norfolk when you all took over the pipe lines in Berkley, if I understand it correctly?

A. That is one way of stating it.

Q. The Portsmouth Water Department was furnishing water to Berkley and South Norfolk just like it was to Suffolk at what it was furnishing to their own consumers in Portsmouth, wasn't it?

A. So far as I have any knowledge.

Q. And when you took over the South Norfolk pipe line, you then increased their rate ten per cent more than you were charging consumers in the City, didn't you?

A. State that question over again?

Q. You are now charging South Norfolk ten per cent more than you charged consumers in the City of Norfolk?

A. That is right.

Q. Now then, there is no question about this interdependence of South Norfolk and Norfolk upon each other?

A. No.

Q. South Norfolk had water, and all this evidence about people dying from typhoid fever over in that section } page 202 } tion has no bearing upon this case at all, has it?

Mr. Sebrell: That is a question of argument.

A. I will admit that the Portsmouth water is as good as Norfolk's.

By Mr. Godwin:

Q. And that they were getting water?

A. Yes.

Q. Now, Mr. Taylor, since the Government put three cents postage, or started the three cents postage, all of your bills have been delivered anyhow, haven't they?

A. Delivered by whom?

Q. By messengers or by hand rather than through the mail?

A. No, we deliver through the mail generally in Norfolk and everywhere.

Q. You generally deliver through mail?

A. Not through messenger but through mail.

Q. I understand. Do you know what is the average family consumption per quarter of water?

A. It varies with the family.

Q. I say average. It runs around twenty thousand gallons, will it not?

A. I don't know that. The minimum in Norfolk is \$10 a year, and there are some five or six or seven thousand that pay the minimum amount. From there it jumps up, and I would say the average householder pays about fifteen or sixteen dollars a year.

page 203 } Q. Now, Mr. Taylor, the average family in Norfolk that would use twenty thousand gallons of water per quarter, it would cost him \$1.50 service charge, would it not?

A. \$1.50 per quarter.

Q. In addition to that, the twenty thousand gallons of water in the City of Norfolk would cost him five dollars per quarter, would it not?

A. I didn't say anything about twenty thousand gallons of water, but you said that.

Q. I am taking it on the basis of twenty thousand gallons of water?

A. It would be five dollars.

Q. If he lived in the county, it would cost him two dollars service charge per quarter, wouldn't it?

A. No. He is charged for the first fifty cents a thousand gallons, where on forty thousand gallons we are charging twenty-five.

Q. I am talking about service charge. I think your rates provide a minimum charge of two dollars per quarter for those living beyond the corporate limits. It is Section A.

The Court: If it does say that, why do you want to put this in the record by a lot of questions? If the record shows it, it is all right.

Mr. Sebrell: The Judge says the record shows it, and you need not answer that. You did not hear the Judge's rulings a number of times, and you went on answering page 204 } ing him.

Mr. Godwin: That is all right, Mr. Taylor, there is no use to answer it.

Witness: That is a detail—

Mr. Sebrell (Interposing): He has withdrawn the question. It is already in the record.

Mr. Godwin: That is all.

RE-DIRECT EXAMINATION.

By Mr. Sebrell:

Q. Now, Mr. Godwin has a way of putting repairs and upkeep and then using the word maintenance, and he asked you when you bought new line or pipe, it is capital; is that in your maintenance?

A. It is not. The repairs on that line, such as making it tight in case it should leak, or any other necessary attention to that particular line, is a maintenance charge, but for the laying of the line or replacement of the line, or any other new work added to that line, it comes out of capital account.

Q. Are they charged in the operation?

A. They are not. That is the difference recited yesterday between one method of account keeping.

Q. So I understand when you say the amount you paid out for the extension of lines was for maintenance, you did not mean that that is maintenance you have taken page 205 } charge of out of your expenses?

A. That is in the bond issue.

By Mr. Godwin:

Q. Mr. Taylor, I ask you this question: Where new lines were run at different places for new business, that comes out of capital account, does it not?

A. That is right.

Q. The maintenance and operation fund is for the purpose of laying—

Mr. Sebrell: That is the thing that we have been hitting on because Judge Chinn used it in regard to maintenance in capital account, and you are trying to bring it into the expense account. It will come up in the argument just like you did the other things when you say that he used the word maintenance. Let us get what you mean by maintenance. Let the record reflect the fact and not a supposition.

Mr. Godwin: It is impossible for me to deal with the witness if I have to explain to the witness before I ask the question.

The Court: I think counsel are unduly agitated about that. I think he has the right to ask the question. He knows what maintenance means.

Mr. Godwin: It is used in these audits all the way through.

The Court: Are you through?
page 206 } Mr. Godwin: Just one second.

Q. (Mr. Godwin) Mr. Taylor, let me understand. You do not spend any capital funds for general operations?

A. We do not.

Q. That is right, isn't it?

A. Yes.

Q. You are not permitted to spend bond issue funds for general operations, are you?

A. We do not.

Q. After you build a line, you maintain it and keep it up out of your operating expenses?

A. So far as is possible to do so.

Q. But in building the line, you build it out of capital funds?

A. That is correct.

By Mr. Sebrell:

Q. If any substantial replacements are put in that line, they are also charged to capital account?

A. That is correct.

Q. And the maintenance you are talking about are the current repairs to keep it in operation?

A. That is correct.

Q. Is any of the depreciation you spoke of covered by the repairs you put in?

A. Depreciation is that which cannot be covered by current repairs.

page 207 } Q. The depreciation which you have stated to the court was \$210,000 a year was over and above—

A. (Interposing) It is what we can keep the plant in condition for operation.

Q. (Continuing)—over and above what you spent for the current repairs and upkeep?

A. That is right.

Q. Now, Mr. Taylor, Mr. Godwin asked you the general question if the statements contained in your report to the City Manager were true, to the best of your knowledge and belief, and you, of course, stated that they were; do you mean to say that these figures, or any figures you may have stated in there, if they differ from the audits and the books of the City, that those figures would represent the facts as against the audit?

Mr. Godwin: I do not see to save my life how he can at-

tempt to impeach his own witness' testimony, and I object to the question and answer.

A. The figures that were given are in many instances not the figures given by the Auditor, and there are good reasons. We make our reports monthly about operating costs, and accumulate the reports at the end of the year for the purpose of cost accounting. They are in no sense of the word the exact and full expenditures by the Department of Public Works for the Water Department. Neither as to revenue nor as to expenditures will they accord in many instances with the exact figures given by the Auditor. For one reason, in revenue they will not, we take no cognizance of the amount set up for bad bills. That is determined by the Auditor and by the Council from year to year. We submit to them the bad bills two or three years after that date, and, of course, they will not agree for that reason. There is another reason why they will not agree often is that the exact date and the exact sum, in certain districts of the City which span the calendar year, as the Water Department money is earned as between the prepayment of the flat portion of the bill and the payment for the meter portion of the bill, as to whether it has been earned in 1927 or 1928. There might be a difference of opinion between the Auditor and the Department of Public Works. It may not accord for that reason, and neither is incorrect. In taking the years over, the Auditor will, of course, have the exact expenditures and the exact receipts. They may not entirely accord with us as to the date of closing the account. There are other reasons why the statement Mr. Godwin has read from the Auditor's report may not exactly be in accord with our report, for the reason that he did not go far enough and did not read the record far enough to find out how the Auditor would handle store or equipment account. We might handle it one way and he might handle it another. It is not incorrect to handle it either way, but for cost keeping purposes we handle it one way, and that is different from the way the Auditor handles it.

By Mr. Sebrell:

Q. Are any books kept in the Water Department?

A. Our information, in all such matters, is taken from the books kept by the Auditor. These accounts are made from weekly and monthly reports from our office, but collated a little different in one case from the other. One is audited by the outside Auditor, and they agree, and in my opinion

the statements that they rendered are in accordance with the facts.

Q. Take the illustration you use: We have a storehouse; the stuff that is bought by the City and put in the storehouse is charged to the Water Department at a certain definite figure. When it is disposed of to use, you charge at a different figure. That would be a paper profit to the City?

A. It is a profit which would take care of losses generally encountered in the handling of small parts and the handling of lead and paving material and cement and sand and all the different material that we handle. There is a certain loss as between the exact amount that we buy and the exact amount that we were able to reload. The Auditor's price is the purchase and our report for cost keeping is the purchase price plus a small percentage to take care of the loss I have mentioned.

Q. So if the purchase price that you have over in your store, when you put it out was more than the actual page 210 } cost to the city, your report and your memoranda in your office would show a higher rate than that which had been actually put in the books of Norfolk City?

A. At times that is true, and in reading the Auditor's report the Water Department has to turn to the equipment account as well as the storehouse account to get the figures that were used.

RE-CROSS EXAMINATION.

By Mr. Godwin:

Q. Mr. Taylor, didn't you report in 1932, to the City Manager (page 63), that there was only about 1.4 per cent of bills rendered uncollected?

A. That is more than the 12,000 set up as uncollectable accounts by the Auditor.

Q. And uncollected bills, at the end of that year, amounted to \$117,231.05, of which nearly one-half was represented by not due until January 1st and therefore collectable in 1933; isn't that correct? As a matter of fact, when you went out of 1931, you had \$95,508.21 worth of bills uncollectable?

A. What?

Q. When you went into the year 1932, at the close of your fiscal year for 1931, your auditor shows you had only \$95,508.21 in uncollected bills, and in your 1932 report page 211 } port you show that there is only \$117,231.05 worth of bills uncollected, nearly one-half of which you will collect by January 1st; is that correct?

A. I can't answer that question because I don't know what

you are talking about. The City Water Department renders bills throughout the year. There is a certain section of the City the bills for which are rendered in December. The manner of handling that December bill as between the year in which the December exists and the following year has varied. One section may represent sixty to ninety thousand dollars worth of bills, of which a small portion represented by meters and charged through the meter has been earned. That represented by the prepayment has not been earned. That has been treated at various times in different ways as between the City audit and the Department of Public Works. As to carrying over from one year to another, the bills are not presented until the first of the following year, and the people could not have paid the bills.

Q. In reference to maintenance of your properties, you have a \$22,000 fund that you have set apart to maintain the pipe line from here to Norfolk, haven't you?

A. No, we have not.

Q. (Page 8 of the 1931 audit) "Reserve for Lake Prince pipe line". I can find it for you if you will permit me.

A. That is no maintenance account at all. You have twenty-two thousand dollars and something reserved for page 212 } Lake Prince pipe line. When the Lake Prince pipe line was laid across the Elizabeth River it was laid by the City of Norfolk, and that pipe was purchased from the Lynchburg Foundry Company, of Lynchburg, and manufactured in Radford. Soon after that pipe was laid trouble developed in the line, and we had—

Mr. Sebrell: May I speak to the Commonwealth's Attorney?

The Court: Yes.

Note: The court, counsel for the City and counsel for the County retire from the court room and return.

Mr. Sebrell: It is agreed that the sum of \$22,301.70, which the Auditor's books show was reserved for Lake Prince pipe line is a fund in the Treasury of Norfolk City coming from some source outside of Norfolk City's funds for any contingent repairs or any breaks in the pipe line under the Elizabeth River on the Lake Prince line.

By Mr. Godwin:

Q. Mr. Taylor, let me ask you this question: You take out of your operating expenses such funds as are neces-

sary to maintain your machinery in these buildings, don't you?

A. To maintain them in working order, putting into them that which ordinary maintenance can put, and over and above that there is a certain wear and tear and deterioration that ordinary maintenance cannot put back into page 213 } them.

Q. Suppose, for instance, one of your pumps breaks down; that is taken out of your operating expense, isn't it?

A. An ordinary break, but if it goes all to pieces and it can be no longer useful, and it has to be replaced, it comes out of capital.

Q. Have you had any of these replacements out of capital?

A. Yes.

Q. If you have a break in a water main and have to go there and put a new piece of pipe in it, do you charge it to capital or operating?

A. An average break is charged to ordinary maintenance. If it is such a break as involves a new line, it would be charged to capital outlay.

Q. You mean if you have to put in a whole new line of pipe it would be charged to capital?

A. If you have to make an expensive substitution because of deterioration or a break in the line, it would be charged to capital outlay.

Q. How about hydrants and meters? They are taken out of your regular operating expenses?

A. The installation of hydrants is entirely out of capital outlay.

Q. That is when they were installed?

A. When they were installed. If a hydrant becomes obsolete because of the size of the new pump engine, as many of them have in the City of Norfolk, the old ones page 214 } are junked or left for other purposes than fire hydrants and other hydrants are installed.

Q. All hydrants come out of capital outlay?

A. Every hydrant I have ever installed.

Mr. Godwin: I want the audits for 1919, 1920, 1921 and 1922. In other words, I want his audits for the time Lake Prince and this pipe line were constructed.

Mr. Sebrell: I don't know the materiality of that, if your Honor please. Mr. Taylor hasn't got any audit. I presume we could find the audits made at any time since 1918, but I can't imagine what would be the materiality of an audit in that time. I think if counsel wants it that he ought to have

given me notice to produce it. We don't know what he wants to show by it.

The Court: Nineteen and when?

By Mr. Godwin:

Q. When did you complete Lake Prince, Mr. Taylor?

A. We completed Lake Prince sometime in '22 or '23—early in '23. We did not commence to regularly use Lake Prince until some years after that.

By Mr. Sebrell: Just answer so far as you know?

A. That is just a matter of looking it up. We did not commence to use Lake Prince until after that time, some months.

page 215 } By Mr. Godwin:

Q. When did you start constructing Lake Prince?

A. Sometime late in 1920.

Q. Late in 1920?

A. We might have had surveying parties up there prior to that.

By Mr. Godwin: I would like to have the audits for 1920, 1921, 1922 and 1923.

The Court: If you have got it, it is all right, but I will not stop the proceedings for that.

Mr. Godwin: Your Honor, you do not have to stop the proceedings.

The Court: I will not send anybody down after it. If he has it here, it is all right, but I am not going down to get an audit of that kind which has no relation, as I see it, to any particular item that we are dealing with.

Mr. Godwin: I may be all wrong about this thing, but it does look to me like that all of the information that they have in reference to all of these pipe lines and all of their expenses in connection with it should be put in that audit. Your Honor said just now that you wanted to know something about the cost of these plants, and I want those audits because your Honor has said that he wants to know something about the cost of them. They are putting in a statement here of eleven million dollars.

page 216 } The Court: If you want to disprove it, you ought to have asked for this information before I do not mean to stop the proceeding.

Mr. Godwin: I did not mean to stop the proceedings, but I think that they can furnish them and we will put them in the record.

The Court: Let us move along.

page 217 } JOHN N. CHESTER,
 a witness on behalf of the City of Norfolk, being
duly sworn, testified as follows:

Examined by Mr. Sebrell:

Q. Mr. Chester, where do you live?

A. Pittsburgh, Pennsylvania.

Q. And what is your business?

A. Consulting engineer.

Q. How long have you been an engineer?

A. About forty-three years.

Q. Does that particular kind of engineering pertain to water and water plants?

A. I have specialized in hydraulic and sanitary work and much work in sewers.

Q. You were for some considerable time vice president of what?

A. American Society of Civil Engineers.

Q. What experience and acquaintance have you with the Norfolk Water plant?

A. I first came into this neighborhood as chief engineer of the American Water Works and Guaranty Company, now the American Water Works & Electric Company; then the holding company that had acquired the Portsmouth, Berkley & Suffolk Water Company. I was responsible for the filter plant here at Suffolk, for the annexation of Cahoon and Kilby as a supply, the rebuilding of the Portsmouth pumping station and the facilities for supplying water,
page 218 } and the determination to abandon wells in Berkley and extend the river crossing to take the place of the supply that they had. My next entrance into this vicinity was when the United States Government was condemning the mains in the old Jamestown Exposition Grounds, and I was accepted as the arbitrator between the Government and the Company to fix the price at which the Government should pay for it.

Next I was employed by the City and the Norfolk County Water Company to pass on appraisals that had been made of the property of Norfolk County Water Company, and, as the result of which, the City paid the price I fixed for the property of Norfolk County Water Company.

Later Mr. Taylor commissioned me to study the situation

on the north side of Elizabeth River and make recommendation for the improvement of the plant and the facilities for supplying from the water supply on that side. I have been called occasionally into consultation and other things since that time, keeping me almost constantly in touch with what was going on in Norfolk and vicinity. I have been, however, until after the incapacity of Col. Maury, who was the engineer on the south side at the same time I was on the north side,—until he was incapacitated by health, I had no connection with the south side.

Q. Now, Mr. Chester, you own controlling stock in several water companies, do you not?

A. I do. I have been connected either with the owners, or owning them myself with others, and the operation of over fifty plants,—Portsmouth, Berkley and Suffolk was one of them. In Virginia just now, we are engineers for Arlington County, in the construction of two and a half million dollars worth of sewers.

Q. Have you sufficient acquaintance with the Norfolk City plant to testify as to what would be proper amount that should be charged off for depreciation each year?

A. I think I have, yes.

Q. Have you investigated the property and made an inventory of it, and gone over the situation with regard to that particular idea?

A. I have investigated the property, yes, with that particular idea.

Q. What would you say would be a proper amount that should be allowed for depreciation of the existing properties connected with the Norfolk City Water plant?

A. I worked with Mr. Taylor in the preparation of the figures that he gave, and we were in accord each with the other in regard to those figures—\$210,000 approximately.

Q. Then, in your opinion as an expert water engineer, the owner of properties, and the long experience you have had and your particular knowledge of the Norfolk City Water plant, you state to the court that \$210,000 would be a fair price to charge off for depreciation of that plant?

A. I think it to be, yes. I believe it to be.
page 220 } Q. You mean that is the annual depreciation?

A. Yes, an annual depreciation of about \$210,000 must be set aside to restore the capital and what has been spent as the plant disappears.

Q. Now, Mr. Chester, there is evidence in this case that the rate charged for the furnishing of water in South Norfolk is ten per cent higher than the cost to the citizens of Norfolk; I wish you would please state to the court whether,

according to your experience and knowledge as an engineer and owner of water plants, and being familiar with the conditions of this plant, whether that differential in the rate is covered by the cost of production and distribution?

A. I believe the extra cost to be twice that much. In fact, I have been connected with a good many bureaus and cities and towns where they have gone outside to furnish, and ten per cent is the least surcharge I have known. Sewickly, Pennsylvania, charges from twenty-five to fifty per cent surcharge, according to its location and so forth. We have been engineers for Sewickly.

Q. You have heard the statement of Mr. Taylor, and you also know, of your own knowledge, the location of the Norfolk County situation, and there has been twenty per cent increase in the territory in Norfolk County; what would you say as to the differential as representing the additional cost of delivery and production?

page 221 } A. Only fair.

Q. Would you say it was covered by that?

A. Well, it would vary, I think, with years, but it is not excessive.

CROSS EXAMINATION.

By Mr. Godwin:

Q. Would forty-five per cent be an excessive amount to charge to consumers outside?

A. Charge them where?

Q. Outside of the City of Norfolk?

A. It might be.

Q. Would fifty per cent?

A. Well, I would want to see the plant before I answer that question.

Q. Well, you have seen the plant down in Norfolk and are familiar with it; would fifty per cent more to consumers outside than to consumers inside be a fair charge to those people living largely around in Norfolk County?

A. Well, in the place where the charges are made, Norfolk County and South Norfolk, I do not believe the rates to be excessive.

Q. Fifty per cent more?

A. No. They are not both fifty per cent, because one is more than the other, and I do not want you to apply my answer to both.

page 222 } Q. Do you think you should charge people in Norfolk County, when you have a pipe line run-

ning around to Ocean View, fifty per cent and charge the people in South Norfolk ten per cent more?

A. Let us see just how you figure the fifty?

Q. I will assume the average family uses twenty thousand gallons of water per quarter, or any figure you want to take. It costs \$1.50 tapping fee, and it costs \$5 as a resident of the city, or \$6.50?

A. It hasn't anything to do with consumption.

Q. I am talking about tapping?

A. I cannot answer the question the way you asked it.

Q. Let us mix them and get the result. It costs \$1.50 under their fees to tap every quarter for the city of Norfolk and \$5.00 for twenty thousand gallons of water, or a total of \$6.50 per quarter?

The Court: Is that \$1.50 for tapping per quarter?

Mr. Godwin: Yes, sir.

By Mr. Godwin:

Q. Outside of Norfolk it costs \$2 per quarter, and any additional to that twenty thousand gallons of water would cost \$8, or it would be \$6.50 in the City of Norfolk as against \$10.50 outside of Norfolk or approximately fifty per cent?

A. If your figures are correct and you have correctly stated it.

page 223 } Q. I think arithmetic will prove it.

A. I can justify it.

Q. You can justify it?

A. Yes. Take the fact that there is one consumer to 620 feet in the county—and that is an enormous expenditure of main for one consumer, even though that main be used for something else.

Q. As a matter of fact, you are familiar enough with the Norfolk City situation to know that they do not run mains to great distance, but they only let them tap mains running to different places in the county?

A. I don't know that.

Q. Are you familiar with the City of Norfolk water plants?

A. Yes, to a great extent, but I cannot agree with your statement.

Q. They run a main to Ocean View, don't they?

A. Yes.

Q. They run a main to Virginia Beach, don't they?

A. Wait. I took Ocean View as Virginia Beach. You will have to give me the map. These names do not always appear as you designate them.

Q. You know where Ocean View is, don't you?

A. May I have the map, and you show me? Let us understand each other, and I will try to answer the questions. When you use the words "Service charge" and "Tapping", you can get all kinds of statements.

page 224 } Q. I am not an engineer. Ocean View is along here (using map).

Mr. Sebrell: This is Ocean View, and that is Norfolk County.

By Mr. Godwin:

Q. Do you know whether lines run off that map out into that section of Norfolk County?

A. I couldn't take a pencil and mark the names, and I do not believe there is a man in the room who can.

Q. Do you know where the mains run through this section?

A. Some of them.

Q. Do you know where they run in this section towards Virginia Beach?

A. There is one that runs from the pumping station up the point designated by the purple star down towards Virginia Beach. I think I can show you the route in which it is laid.

Q. The chief values of water works properties that are owned by the City of Norfolk are pipe lines and reservoirs, are they not?

A. I would say that these are the two larger investments, yes.

Q. The two larger investments?

A. The two most costly elements of the water plant serving the City of Norfolk.

Q. Scofield Engineering Company is a rather large engineering company, isn't it?

page 225 } A. I am not familiar with it.

Q. Do you know H. G. Gillett's table of depreciation?

A. I have seen it.

Q. You use it, don't you?

A. No.

Q. If he says fifty to one hundred years is a useful life of a reservoir, what would you say in reference to that?

A. I say it all depends.

Q. What would you say is the useful life of Lake Prince, put up with a concrete spillway and the dam that they have there?

A. If I may explain, I might say the principal element of depreciation of Lake Prince is that it has been built for a

certain fixed capacity. Later on that dam will have to be raised. The spillway will then have to be entirely rebuilt, and there are a good many elements there, and such elements have to be taken into consideration.

Q. That is capital outlay and not depreciation, isn't it?

A. No, but it will render unfit for use a great deal of the present outlay, and, therefore, we have to look forward to amortise that which will be put out of use in the interim between the time it is built and the time it is put out of use.

Q. If your figures are based on that, when do you assume that Norfolk will grow so big that they will have page 226 } to increase the spillway at Lake Prince, or at Burnt Mills, even if all of that will have to be done?

A. We take just a general time, assuming that such work in the future would need to be done. (Witness looks at paper.) For instance, we do not depreciate the water rights there at all, but consider that they would go on further. There is one hundred thousand dollars with no depreciation.

Q. Do you not depreciate the basin of the lakes, because you can't wear it out?

A. No, the rights are perpetual.

Q. In your opinion, that dam ought to stay there, unless enlarged, for the next one hundred and fifty years?

A. The dam and the water rights will remain.

Q. Let us get to the dam.

A. The dam is not perpetual.

Q. You would say the dam would last certainly one hundred years?

A. No, I do not expect it to,—not all of it.

Q. What useful life do you give it?

A. We have taken a good many of the dams and put them together. If you want to say, as an example—

Q. (Interposing) Answer this question: What useful life do you give the dam at Lake Prince?

A. If it had been thirty years ago and you had taken a lot of dams and asked me the same question, I could have answered because a great many are already out page 227 } of business and they did not last thirty years.

They did not disappear physically. They were sort of put out of business by more expedient supplies at other places.

Q. You mean by reason of obsolescence?

A. You can call it obsolescence.

Q. Because they went to other places for water supplies?

A. Yes.

Q. Lake Prince is a permanent water supply, isn't it?

A. Fairly so, yes, but no one can say it is going to be permanent and no one can say—you have to redevelop it some day, and when you do you will put a lot of things out of business.

Q. What is the useful life you give the dam and spillway at Lake Prince?

A. I give the dam one hundred and the spillway another.

Q. What do you give the dam—one hundred?

A. No.

Q. You don't think the dam will last one hundred years?

A. If let alone and used just as it is, yes, and will get better every day, the earth embankment, but I expect many changes to be made. More water will have to be stored, and when more water is stored this dam, like many other dams that have been put out of business, it will go just like those—obsolescence.

Q. You are familiar with the Norfolk City supply, and you know that that dam is so arranged, and that the page 228 } basin is so arranged, that they can pump water into it from Burnt Mills, and even go to the Chowan River?

A. Yes, but I will not say that that is the most expedient thing.

Q. But you know that it was built as a permanent thing?

A. It was built as permanent as long as used in the way it is used until abandoned, or something else is built.

Q. And the water supply is so adequate that they do not pump but half the time, and are furnishing Norfolk and Norfolk County and Princess Anne County and Ocean View?

A. That does not change my answer one particle.

Q. The only way that this dam will ever depreciate, in your opinion, is by Norfolk growing so big that they will have to raise it?

A. No, not that. There are so many things I cannot guess.

Q. Your figures and Mr. Taylor's, in reference to the pipe line, are the same; you and he compiled them together?

A. Practically so, yes.

RE-DIRECT EXAMINATION.

By Mr. Sebrell:

Q. Mr. Chester, may I ask this question: Is depreciation in water plants the same in all localities, or does the character of the water and the nature of the location have something to do with it?

page 229 } A. Everything you mention, and a great many more. No two localities give the same, and, if

they did, you would not need experienced men to fix the depreciation. For that reason you cannot take Gillett's table.

Q. Is the life of a water plant and the water mains in Norfolk, with our conditions, less than in other localities?

A. The life is more.

Q. And the depreciation would be more or less?

A. It would be less. It is one of the maximum districts I have encountered in forty-four years or over. That is, the depreciation is more here than most places which I have come in contact with.

RE-CROSS EXAMINATION.

By Mr. Godwin:

Q. The Lake Prince situation in one part of Nansemond is not greater than Lake Kilby near Suffolk?

A. Not necessarily.

Q. And that old dam has been there probably seventy-five years, and it is still in good condition, isn't it?

Mr. Sebrell: He doesn't know how long it has been there.

By Mr. Godwin:

Q. Do you know how long it has been there?

A. No, but it was said it was built by Portsmouth, Berkley and Suffolk Water Company, and it has been
page 230 } raised since, and in raising it I don't know
whether they improved it. I know I stated how
Cahoon could be annexed.

Q. And the dam is still in good condition?

A. Yes, but it is not true in many, many cases. All come under that category, and still they have been abandoned.

Q. Have you seen Lake Prince and the pipe line out there recently?

A. Yes.

Q. It is in good condition, isn't it?

A. No, not all of it.

Q. In Mr. Taylor's report in 1930 or 1931, he reported all the properties of the water company were in good condition.

A. I think Mr. Taylor has changed his mind about some of the elements since that date.

Q. Since 1931?

A. Yes.

Q. Oh, I see. That is all.

A. This deterioration of the wood pipe has all been dis-

covered since 1931, and it is a very serious element in the Lake Prince supply.

Q. How many miles of that wood pipe?

A. Six miles, I think.

Mr. Sebrell: If you don't know, don't try to say.

page 231 }

WALTER H. TAYLOR,

a witness on behalf of the City of Norfolk, recalled, testified as follows:

Examined by Mr. Sebrell:

Q. Mr. Taylor, how many miles of wood pipe have you?

A. Close to ten.

Q. Isn't all from Chuckatuck to Lake Prince wood?

A. That is all except a short distance from the summit, and the metal pipe extends from Craney Island.

Q. Mr. Taylor, what was the total amount of bonded indebtedness issued for this improvement when you all put in the Lake Prince pipe line and the facilities in Norfolk to take care of it?

A. What was the total cost of the Lake Prince development?

Q. Yes.

A. There was authorized at that time, by a vote of the people of Norfolk, a six million dollar bond issue for the enlargement of the water supply of the City of Norfolk. Of that six million a large sum was spent for the rehabilitation of the old plant and the rehabilitation of the system in the City of Norfolk as well as the Lake Prince water line and pumping station in the City of Norfolk and the pump and reservoir at Lake Prince. About two-thirds of it was used for what we term the Lake Prince supply and about one-third for the other purposes I have stated.

Q. Then there was a six million dollar issue?

page 232 } A. Six million dollars issued of water bonds.

JOHN N. CHESTER,

a witness on behalf of the City, recalled, testified as follows:

Examined by Mr. Godwin:

Q. If the City of Norfolk has property which they carry as nearly a twelve million dollar asset, and have paid that down to a point where their sinking fund added to their payments would leave only about seven and a half million dollars due, they have adequately taken care of depreciation, haven't they?

A. I would have to figure that. That should be the case, but whether it is, or not, I cannot say.

By Mr. Sebrell:

Q. Would you consider that from \$160,000 to \$170,000 a year, plus sinking fund for the retirement of the bonds, would equal the depreciation of this?

A. Not at the present rate that it is depreciating, no.

page 233 } R. C. NORFLEET,
a witness on behalf of the City of Norfolk, being
duly sworn, testified as follows:

Examined by Mr. Sebrell:

Q. You are Commissioner of the Revenue of Nansemond County, are you not?

A. Yes.

Q. And you have made the assessments on the property involved in this case?

A. Yes.

(No Cross Examination.)

At 12:40 a recess was taken for lunch until 2 o'clock.

page 234 } AFTERNOON SESSION.

Suffolk, Virginia, October 30, 1934.

The court met at the expiration of the recess.

Present: Same parties as heretofore noted.

Mr. Godwin: I don't know whether it is in the record, or not, but I would like to put it in there that these bonds that have been issued by the City of Norfolk were issued and payments on those bonds are drawing interest at the rate of four per cent compounded annually.

The Court: I don't know that it is a fact.

Mr. Sebrell: With regard to that, we have no hesitancy in making the statement that under our policy the calculation on the annuities which are paid into the sinking fund for the repayment of bonds is calculated upon the amounts paid in and the accumulation of four per cent annually to equal the amount of bonds at maturity.

Mr. Godwin: Four per cent annually?

Mr. Sebrell: Yes.

page 235 } HERBERT C. JANUARY,
a witness on behalf of the County of Nansemond, being duly sworn, testified as follows:

Examined by Mr. Godwin:

Q. Mr. January, you looked over some of these audits of the City of Norfolk?

A. Yes.

Q. Have you noticed how long these bonds run?

A. In the majority of cases the water works bonds run for thirty years. In one case a bond ran for fifty years.

Q. If the City of Norfolk pays the sinking fund requirements and it draws interest at the rate of four per cent compounded annually, how long will it take those bonds to retire themselves?

A. As I understand, the sinking fund is figured that these bonds will retire in thirty years at four per cent.

Q. Have you figured on the depreciation as testified to here by the witnesses?

A. I have looked up certain authorities and found that the average depreciation—

Mr. Sebrell: (Interposing) One minute. I think unless he qualifies as an expert on water operations that he should not pass judgment or state his opinion on that.

Mr. Shultice: He stated that he looked up certain authorities. Those authorities would have to be produced.

page 236 } The Court: I don't know what the witness
knows about this particular phase of the question. I do not want to stop him if he can answer it.

Mr. Godwin: They have figured those bonds—

Mr. Sebrell: (Interposing) Don't tell him.

By Mr. Godwin:

Q. Does the depreciation, as testified to here by the witnesses, amount to as much as the sinking fund requirements put in those sinking funds?

A. The witnesses that I heard this morning testified that there was \$210,000 put aside annually to take care of depreciation.

Mr. Sebrell: There is no such testimony as that in this case.

By Mr. Godwin:

Q. How much would it take to retire a bond issue over

the period of fifty years of one dollar figured on the dollar basis?

A. If approximately six million is set annually at four per cent it will accumulate a dollar over a period of four years.

Q. How much on a dollar every thirty years?

A. One cent in seven years.

Q. Then, if this pipe line is supposed to last seventy years, have you figured how much it would be per dollar to retire it in seventy years?

page 237 } A. I have not, but it would be at less than the amount for fifty years.

Q. Have you checked the audit, or been over these audits?

A. I have gone over the parts that refer to the water works.

Q. Do they work on an accrued basis or cash basis?

A. The audit itself shows that cash receipts and cash disbursements. There is another statement that shows the accrual of water rent and the expense apparently carried on a cash basis.

Q. Were you able to take these audits and the figures in them and check them correctly with this statement which has been filed here by the Auditor of the City of Norfolk and the Public Accountant?

A. The statement there would not conform entirely with the figures contained in the audit.

CROSS EXAMINATION.

By Mr. Sebrell:

Q. Mr. January, I am handing you a statement of the audit for 1927, showing the revenue received from the Division of Water; I wish you would please read to me the various items that are put in that audit as the revenue received from the Water Department?

A. Is this revenue received? Is this revenue actually received or the revenue charged?

page 238 } Q. That is the revenue charged.

A. You asked for revenue received.

Q. That is the revenues charged that were filed in our statement. Read it out and see what the book says.

A. This is revenue in detail, Division of Water, water rents \$838,953.10.

Q. Tell the court whether or not the report of the Auditor shows the same figure?

A. No.

Q. What is the next item?

A. Penalties \$8,272.16.

Q. Tell me whether that corresponds with the statement filed in this case?

A. It does.

Q. What is the next item?

A. Meter rents (fire purposes) \$541.

Q. Tell me whether or not that corresponds with the statement filed?

Q. The next item?

A. Fishing permits and privileges \$5,911.

Q. Does that conform to the statement that we put it?

A. It does.

Q. Is there any other item there?

A. Rent of surplus land \$675.

Q. Does that correspond with our statement?

page 239 } A. It does.

Q. All right?

A. Sale of junk \$19.

Q. That is the item that is not included in this statement?

A. That is not in there, and in that statement also you have loss in collections estimated at \$12,841.85. That does not show in the audit.

Q. So that is the difference between the audit and the report that is made by the Auditor in the statement that we filed in this court?

A. Of the revenue?

Q. Yes.

A. Yes, sir.

Q. Now, let us see about expenses. Mr. January, I will get you to turn to page 22 of the Auditor's report. You will see the expenditures for the Water Division in that report. We have got the totals only down here in our statement. What do you make those totals, as shown in the Auditor's report to be?

A. \$234,832.34.

Q. Please add to that an item covered in another place as insurance \$2,676.01 and inventory decrease of \$3,590.20?

A. \$241,098.55.

Q. I will get you to add to that item extraordinary expense of \$2,785.49?

page 240 } A. \$243,884.04.

Q. Now, deduct from that a gain in storehouse operation of \$6,734.08?

A. \$237,149.96.

Q. I want you to tell me whether or not that corresponds with the statement that was filed in this court as the amount of operation expense of the Department for that year?

A. The same as on this statement?

Q. Yes.

A. It is.

Q. So that does correspond?

A. Yes.

Q. If those items which I have had you add and subtract are proper items for the ordinary expense, your calculation of the Auditor's report and his statement filed in this case are one and the same?

A. The figures for ordinary expenses, yes.

Q. Is there any difference there between the books as shown by the audit and your estimate?

A. Interest on bonded debt is an expense to the Water Department, and another section of the books shows interest on bonded indebtedness.

Q. Then the question between our statement filed and what we have charged is the interest on the bonded indebtedness. How much do you say is the interest on bonded indebtedness?

A. According to the statement here, it is not page 241 } questioned. That figure was not included in the report concerning the Water Department.

Q. But you do not say that that is not chargeable interest rate on the bonds of Norfolk City, do you?

A. I have not calculated the amount of interest here, but the interest would be a chargeable amount.

Q. You have figured the interest simply on those bonds which are stated in this Auditor's report and denominated water bonds; that is a fact, isn't it?

A. Yes.

Q. And you did not take into consideration if there are any bonds under the head of general improvement bonds, a part of which belong to Norfolk Water bonds?

A. A part of the bonds not being designated water bonds, I was unable to determine exactly the interest.

Q. And, therefore, you would not say to the court that the statement furnished by the Auditor is not the proper interest charge? Not knowing what the water bonds are, you could not say what is the interest on the water bonds?

A. No.

Q. Were you in court yesterday when Mr. Hilton, a Certified Public Accountant and also a former Auditor of the City of Norfolk, testified that some of the bonds mentioned in the report of the Auditor, denominated in their general improvement bonds, were incorporated in that?

A. No, I was not in court.

page 242 } Q. Then if there are other bonds that are incorporated in the general improvement bonds, that would change the result of your figures?

A. Yes.

Q. Are there any other discrepancies between these reports and that report?

A. The amount chargeable for the sinking fund, apparently based on thirty years' time, and as I understand the sinking fund would take the place of annual depreciation of fixed assets. That being true, I would say the sinking fund is figured excessively.

Q. Did you figure the sinking fund to retire the bonds, or did you figure it as a matter of what you think ought to be the depreciation according to some statement?

A. If it is going to be chargeable as an expense, I figured it should be taken as a depreciation item.

Q. If you figure it annually to retire the bonds, it is correct?

A. If primarily to retire the bonds, I would say it is an expense item.

Q. We are talking about the correctness of the figures and not the application of the figures. As to the correctness of the figures, if they are figured with an addition of accumulation of four per cent interest to retire the bonds in thirty years, it is correct?

A. Yes.

page 243 } Q. The only objection you find is that you do not think that is a proper depreciation?

A. I do not think it is a proper expense item.

Q. That is the only difference between us. The figures are correct, but you do not think it should be included in expense?

A. No.

Q. Is there any other difference between the Auditor's report and what you think a difference?

A. There is deducted from gross revenue each year the sum of \$12,000 interest paid by Virginia Beach on the construction of water mains. If the \$12,000 is paid by Virginia Beach for the construction of water mains, I could not see why there should not a part of the revenue to the Water Department.

Q. Your conclusion is whether it should be deducted rather than in the correctness of the figures?

A. I am not questioning the figures, but I am questioning whether it should be deducted, or not.

Q. Is there any other difference between the statement that we furnished to the court and approved by the Auditor yesterday and your examination?

A. The same statement I made concerning 1927 would equally apply to each subsequent year. I mean by that, that

the question of sinking fund, the question of losses in collection.

page 244 } Q. In other words, if we take it from our statement, the estimated loss of uncollected bills and the amount of sinking fund, the other part corresponds?

A. Yes, with this exception, that a part of this up here is figured on accrual and these are actual cash payments.

Q. That is the total sum that was due us from the rent and the other receipts—that was the total amount that we could recover for that year and these were the amounts of expenses. Except as to the amount that we estimated for uncollected bills and the reasonableness of putting in the amount of the sinking fund as an expense are the only two differences between us as the result of your analysis of the books and the books themselves?

A. Yes.

RE-DIRECT EXAMINATION.

By Mr. Godwin:

Q. I want you to take the 1931 audit, and turn to page 70 and find out what the total receipts were for the Water Department for the year 1931?

A. You are referring to—

Mr. Sebrell: I think, for the information of the court, that what he is interrogating about now is the report or statement made from the Superintendent of the Water Department to the City Manager rather than the books
page 245 } of the Auditor.

Mr. Godwin: I think I proved that they were correct.

By Mr. Godwin:

Q. What does that show?

A. It shows a gross revenue of \$889,085.30.

Q. For 1931 what does the exhibit show that we have filed here?

A. \$841,510.41.

Q. Now, look at page 21 of that audit.

Mr. Sebrell: Of which audit?

Mr. Godwin: 1931. All these questions are addressed to the 1931 audit.

Mr. Sebrell: I submit that they are not asked as to 1931. What the witness refers to is not as to the audit but refers to a report from the Superintendent of the Water Department to the City Manager.

Mr. Godwin: I want to show that they are not the same.

The Court: Mr. Taylor stated that on the stand. He showed you wherein they differ. He said that they were not the same.

By Mr. Godwin:

Q. What does it show there that the gross receipts were from the Water Company for that year?

A. It shows from Water Division \$888,320.94.

Q. Does that conform with the statement and page 246 } exhibit that they filed here?

A. It does not.

Q. Look at page—

Mr. Sebrell: Is this re-examination or cross examination? I had started in to them and he said that the difference is the same difference as he mentioned before. I asked if the balances conformed and he said that they do. He cannot impeach his own witness. Are you going to call him back after each question and renew his direct examination on that?

Mr. Godwin: Mr. Sebrell wants me to swallow this statement filed here, and, your Honor, I am unwilling to do it, and I think I have the right to show by the testimony of our witness that this statement by which they tried to show a loss each year is incorrect.

The Court: The only way you can show it is by the audit, isn't it?

Mr. Godwin: Yes, but I think I ought to show it.

The Court: Doesn't that speak for itself? Doesn't it speak internally of what it contains? Are you trying to point out that this is not so and this is not so when anybody can look at it and see?

Mr. Godwin: There are one or two items in question I would like to ask about.

The Court: All right.

page 247 } By Mr. Godwin:

Q. Have you found in this statement as filed, which is supposed to show an exact set-up of the Water Department, the balance on hand as of that year?

A. Balance of what?

Q. Balance of money on hand as of the year 1931?

A. No, because this is apparently a statement of operation, and does not show anything except the liabilities in the statement.

Q. They are charging up liabilities to it. I want to ask you something about the assets: Look on page 5 or 11 either—

A. (Interposing) Page 11.

Q. Does it show what the water bills were carried over for that year?

A. It shows water rents, accounts receivable, as of December 31, 1931, \$95,508.21.

Q. It shows on page 8 the item of \$22,301.70, which was discussed here, "Reserved for Lake Prince pipe line"?

A. \$22,301.70.

Q. Look on page 10, the very year that they claim—

Mr. Sebrell: (Interposing) Ask the question.

By Mr. Godwin:

Q. What does that page show, Mr. January? Does it show, or not, any balance on hand to the Water Department?

A. It shows a balance for the water account page 248 } in the Norfolk National Bank of Commerce, \$105,358.31.

Q. Now, look down further and see if you see some more balances?

A. Under the petty cash fund, "Cashier, Water Department, \$500. Lake Prince Water supply \$100."

Q. Now, look over on page 13 and see how much equipment was to the Water Department in the storehouse at that time?

A. Storehouse supplies, materials and equipment on hand for water \$84,710.21.

Q. Now, I want you to look on page 21 of the audit, under the head of ordinary expense?

A. What page?

Q. Page 21 or 28?

A. Page 21.

Q. What were the ordinary expenses for the Water Department that year?

A. Ordinary expense, exclusive of bond interest and sinking fund requirements, \$240,944.23.

Q. See if that is the same as this report which is filed here?

A. This shows \$244,550.61.

Q. Are there similar discrepancies in all of these audits you have examined?

Mr. Sebrell: I object to that.

Mr. Godwin: Do you want to take them up one by one?

Mr. Sebrell: I do, because I will dispute every page 249 } one of them.

By Mr. Godwin:

Q. I will ask you this question: Are there similar discrepancies in these audits—

Mr. Sebrell: I object.

The Court: Let him get through stating the question.

By Mr. Godwin:

Q. Have you been through the 1930 audit?

A. Yes.

Q. Now, look on page 23, 25 or 37, either one; what does that show the total revenue of the Water Department to be for the year 1930?

A. \$889,996.23.

Q. Does that conform to the exhibit filed here by the Auditors?

A. No, it does not.

Q. Look on page 75 of that record; what does that show the gross receipts were?

A. Total revenue \$891,663.92.

Q. Now, I want you to look on page 28 and see if the profit there of \$3,181.88 is figured in that statement that you just gave of the revenue?

A. Which statement is that?

Q. You will find it on page 23 or 25, the way the item is made up.
page 250 } A. On page 23, whether this item of storehouse profit?

Q. Yes. On page 25 of that audit, does that account for the \$3,181.88 shown as a storehouse profit on page 28 of that audit?

A. It does not show from any figures under this "Division of Water" unless it is included in one of these large figures, and there is no statement made of it.

Q. Turn to page 12 of that audit and give the cash balance of the Water Department on hand as of that year?

A. In the Norfolk National Bank, Water Division had \$13,926.77. There was a special water account in the National Bank of Commerce of \$915.12. Petty cash fund, cashier of Water Department, \$500. Lake Prince water supply \$100.

Q. Look on page 14 of that record and see if anything was charged off that year for bad debts?

A. Under the caption of "Balance, reserve for doubtful accounts", I do not see any charge-off for water bills.

Q. Now, I want to ask you to look at page 13 of that record and see what the uncollected water bills were at the end of 1930?

A. \$103,659.12.

Q. Now, you testified just now you found there were \$95,508.21 the following year. Do you see where that amount has been credited anywhere for water bills collected that were delinquent?

A. I have not had the record of what might page 251 } have been charged off in 1931.

Q. For the amount charged off in 1931, look at the 1931 audit, on page 12?

A. Water bills charged off \$22,024.22.

Q. Now, have you seen a credit applied anywhere for those delinquent water bills that were collected?

A. In the cash receipts they more than likely included them in there.

Q. If I understand it, they were for bills sent for that year?

A. I believe the audit shows the bills which were collected. It does show a decrease from 1930 to 1931.

Q. Of how much, approximately?

A. From \$103,000 to \$95,000.

Q. Now, I want you to look at page 23 of that record—that is of the 1930 record; what was the total expense, the ordinary expense, for that year?

A. \$243,299.97.

Q. That is approximately \$4,000 more than shown in this audit, isn't it?

A. \$240,936 is shown in this statement.

page 252 } RE-CROSS EXAMINATION.

By Mr. Sebrell:

Q. Now, Mr. January, I am going to ask you to take the audit that we have filed, the annual audit made of the affairs of the City of Norfolk for 1928, and I will ask you what that audit shows as to water rents for 1928?

A. \$843,490.45.

Q. Is that the same as on our statement?

A. It is.

Q. What is the next item?

A. \$7,345.51.

Q. Does that correspond with the statement?

A. It does.

Q. The next item?

A. Meter rents \$541.

Q. Is that right?

A. It is.

Q. The next one?

A. Fishing permits and privileges \$3,427.15.

Q. Is that correct?

A. It is.

Q. The next item?

A. Rent of surplus land \$4,479.50.

Q. Is that correct?

A. It is. The sale of junk and old equipment \$733.72.

Q. Is that correct?

page 253 } A. It is.

Q. What is the total?

A. \$859,283.67.

Q. Would that be the figure if we took off the \$12,000? Isn't that the same thing that was put up for uncollectible bills? Wouldn't that correspond?

A. \$848,017.39.

Q. Is that the total here?

A. It is the same.

Q. The only difference then between the Auditor's book and the statement furnished is in this statement we have deducted \$12,000 for uncollectible bills and there was no deduction made in the Auditor's report?

A. The difference I see in one is taking of revenue and the other is taking of cash receipts. When you are asking me questions about that, there is bound to be some variation.

Q. There is bound to be some variation because they are different items on the books. I am talking about the statement that we filed in this court as compared with the Auditor's book, and you have read my statement; don't they correspond except for the \$12,000 for deductible accounts that the auditor did not deduct?

A. Yes.

Q. He did not deduct anything?

A. Not in this statement here.

Q. Let us see about the expenses, to see whether
page 254 } the Auditor's report supports this statement.

Now, Mr. January, I am going to ask you—that is what the Auditor shows for expenditures under the head of Water Division?

A. \$247,573.95.

Q. That is the same figure that they have in their work sheet?

A. Yes.

Q. If you add to that extraordinary expense of \$87.90 you get a total of \$247,661.85?

A. Yes.

Q. If you deduct from that the gain in storehouse operation of \$2,208.87, you get what figure?

A. \$245,390.89.

Q. Is that the amount that we put in the report that we filed in court?

A. Yes, sir.

Q. So that the addition of the insurance and the subtraction of gain in storehouse operations, the Auditor's figures and the report that we filed tally, do they not?

A. For revenue and expense as shown by the audit.

Q. Now, in 1929, what do they put as water rents? I am handing you this account of the revenues from the Water Department?

A. \$870,444.41.

Q. Does that correspond with our statement?

A. It does.

page 255 } Q. What is the next?

A. Penalty \$2,054.11.

Q. Does that correspond?

A. Yes. Meter rents \$541.

Q. Does that correspond?

A. Yes. Fishing permits and privileges \$3,766.10. Rent of surplus land \$1,479.

Q. Does that correspond?

A. It does.

Q. The next item?

A. Sale of junk \$414.46.

Q. Does that correspond?

A. Yes.

Q. What is the total? The items are the same except the \$16,000 deducted?

A. Yes.

Q. So the revenues that we received from the water plant in 1929, as shown by the Auditor's book, correspond exactly with the statement that we filed with the court as to water receipts except in the statement that we filed there has been deducted \$12,000 and in the Auditor's report nothing has been deducted for uncollectible accounts; is that true?

A. It is.

Q. Now, let us try the expenses for that year, page 22.

What does that show?

page 256 } A. \$248,421.79.

Q. Does that correspond with the figures on the work sheet?

A. Yes.

Q. If you add to that \$878.09 for extraordinary expense and insurance \$48.00, it would make a total expense of \$249,347.88?

A. It would.

Q. If you deducted from that \$578.13 as a unitory increase, you would have \$248,769.75?

A. Yes.

Q. If you deduct from that gain in the storehouse \$1,662.67, you would have what results?

A. \$247,107.08.

Q. Please tell me whether or not that corresponds with the amount of expenses that we put in the operation of the Water Department for that year?

A. It does.

Q. So if these divisions were proper to be made in the expense, then the Auditor's books and the statement that we furnished to the court correspond as to that year?

A. Yes, sir.

Q. Now, let us see about 1930, page 104; get the item of water rent; what does he put down as revenues from the Water Department?

A. \$879,391.28.

page 257 } Q. Does that correspond with the figures here?

A. Yes.

Q. The next?

A. Penalties \$1,246; meters \$541; fishing permits and privileges \$6,217.95.

Q. Is that right?

A. It is. Rent of surplus land \$2,600.

Q. Is that the same thing?

A. It is. Sale of junk and old equipment \$1,247.31.

Q. Is that the same?

A. It is.

Q. So the Auditor's report and the statement that we filed correspond with the exception that we have deducted \$12,000 for uncollectible bills, whereas the Auditor did not make any deduction for uncollectible bills in that account; is that right?

A. According to the statement here.

Q. According to the Auditor's books?

A. Yes.

Q. Now, let us see about the expense, page 32. Now, Mr. January—

A. I do not see where it is on page 32.

Q. It is under "Public Works". You will have to add that up again from the expenditures.

A. \$243,199.97.

Q. Is it 199 or 299?

page 258 } A. 299.

Q. Does that correspond with the Auditor's figures?

A. Yes.

Q. Now, if you add to that insurance of \$504.63 and inventory increase of \$313.97, it would make a gross expense of \$244,118.57?

A. Yes.

Q. If you deduct from that gain in storehouse operation \$3,181.88, you would have what figure left?

A. \$240,936.69.

Q. Does that correspond with the statement that we have filed with the court?

A. It does.

Q. So if those are proper items to be charged into extraordinary expense account and to the Water Department, then the books of the Auditor and this statement would correspond?

A. Yes.

Q. All right. See if we can get statement for 1931, page 23. Now, what is the revenue that he has for 1931?

A. \$878,982.04.

Q. Does that correspond with this figure?

A. It does. Penalties \$1,007.00; meter rents \$529; fishing privileges \$5,725.08; rent of surplus land \$2,077.82; sale of junk \$269.27.

Q. Does the Auditor's report of those revenues correspond with the statement that we filed in court as to page 259 } the revenues?

A. With the exception of \$16,000.

Q. Deducted for bad accounts?

A. Yes.

Q. Now, let us see about the expenses for that year on pages 30 and 31.

A. \$240,944.23. It corresponds with it.

Q. Now, if you will add to that insurance of \$469.35 and auto expense of \$3,522.71, you would have a total of \$244,936.29, wouldn't you?

A. Yes.

Q. Now, if you add the inventory increase of \$45.24 and deduct a gain in store operation of \$340.44, you get what?

A. \$244,550.61.

Q. Does that correspond with the figure which has been furnished the court in the statement?

A. It does.

Q. So if those additions I have given were proper to be put in that account, then the Auditor's report and the statement furnished the court correspond?

A. Yes.

Q. Now, how about 1932? Mr. January, I wish you would look at these items that are contained in the statement which furnished the court and which was introduced in evidence on yesterday, and compare that with the Auditor's report, and tell me whether or not the amount of revenue shown on that statement does

not correspond with the revenue shown on the Auditor's book with the exception of the amount of \$15,000 that we have deducted for non-collectible bills?

A. Seventy-five cents is omitted, extraordinary revenue.

Q. The sale of junk?

A. Yes, and with the exception of that and \$15,000.

Q. In that statement they do not put in seventy-five cents that they had received from junk—in the statement filed in court?

A. Yes.

Q. And the Auditor did not deduct anything for non-collectible bills in the water account?

A. No.

Q. Now, let us see about the expenditures?

A. Total \$196,431.72.

Q. And that is the same amount that the City Auditor shows, isn't it?

A. Yes.

Q. If you add to that extraordinary expense of \$1,039.10, insurance \$350.80, auto expense \$3,016.79, inventory decrease \$477.81, and deduct from that storehouse gain of \$1,516.11, you get what figure?

A. \$200,000.11.

Q. Does that correspond with the amount that we have fixed in our statement to the court, which we ad-
page 261 } mitted in evidence as being the amount of our
expenses?

A. It does.

Q. Then, so far as the statement that we filed in court showing the revenues received and the expenses incurred for the years 1927 to 1932, inclusive, the Auditor's report—I am talking about the Certified Public Accountant who made the annual audit for the City—his report corresponds with this statement with the exclusion of seventy-five cents omission for the sale of junk and the amount that we have deducted for non-collectible bills?

A. That is right.

RE-DIRECT EXAMINATION NO. 2.

By Mr. Godwin:

Q. Mr. Sebrell asked you if this statement shown under "Revenue in detail, actual and estimated" in the audit for 1927 amounting to \$854,352.26, did not conform with the statement that they filed here. I want you to look at page 19 of this record, showing the actual cash receipts for that year for the Water Department, and tell the court what is the difference between them?

A. The actual cash receipts—\$871,402.64.

Q. Are there items in there that are not included in the other statement that he examined you from?

A. The difference in the actual receipts, installing taps and meters, included in the cash receipts, but not in—
page 262 } cluded in the revenue account.

Q. Does that show that they are cash receipts taken in for the year 1931 for installing taps and meters?

A. This is the 1927 audit.

Q. I mean 1927.

A. It shows cash receipts for installing meters \$18,317.40.

Q. It also shows miscellaneous things and service for that year of how much?

A. \$4,742.92.

Q. And the items aggregating the amount shown there. Now, in 1928.

Mr. Sebrell: Is this something different from what you went over the first time?

Mr. Godwin: Yes, it is different.

By Mr. Godwin:

Q. In 1928, what were the total cash receipts for the Norfolk Water Department?

A. \$855—

Mr. Sebrell: If your Honor please, there must be an end of an examination. He asked about the cash receipts, and then I took each year and showed that so far as the revenue is concerned—he is undertaking to impeach the books of the

City of Norfolk—I undertook by his witness to
page 263 } show, and I think I did show, that the statement made by the Auditor corresponded with the statement that we put in. He comes back now and talks about the cash receipts for that year, and I do not see the materiality of it at all.

Mr. Godwin: They have come in and attempted to show that they have sent out bills for a certain amount for that year, and they are trying to ask this court to fix it as the income for that year when, as a matter of fact, these audits show the income and cash receipts were far more than they are claiming, and that is what I am showing against that statement, and it is perfectly apparent.

The Court: Apparent from what?

Mr. Godwin: It is perfectly apparent, if we can have the testimony as to these various items which they have not included there.

The Court: Doesn't it appear in the audit?

Mr. Godwin: All of them appear here—every one of them appears.

The Court: How can he testify to it? He don't know anything about it but what he sees there.

By Mr. Godwin:

Q. Are those statements prepared by the Auditors of Norfolk prepared in accordance with the cash receipt page 264 } cepts taken in by the Water Department for those two years?

A. This statement here is based on cash receipts.

Q. Are they working from collections or a cash receipt basis, from all of those audits?

A. According to this statement they are working it on a cash receipt basis.

Q. Now, I ask you for 1929 what were the cash receipts for the Water Department?

A. \$902,737.33.

Q. For 1929?

A. Yes.

Q. And what do they show?

A. \$866,699.11.

Q. After charging off \$12,000 for depreciation?

A. Yes.

Mr. Sebrell: Every bit of this was gone through yesterday. As I understand on yesterday, when Mr. Hilton was on the witness stand, you asked him each time what were the cash receipts from Water Department and he explained to you in each case that there was a difference between the cash receipts and revenue; that cash receipts show what had been collected from all sources, whether from revenue sources that year or the preceding year, and every one of these questions was gone into yesterday. I cannot see the reason page 265 } for putting that into the record the second time.

Mr. Godwin: I know, Mr. Sebrell, you don't want to get in here the cash receipts.

Mr. Sebrell: I have never tried to keep anything out of the case. I have brought these books, and this is already in the record, and you cannot make it any stronger by putting it in there twice.

Mr. Godwin: I suppose the only way I can get this is to argue it before the Court.

The Court: It is a matter of segregating the testimony, I assume, but you are not adding anything to the knowledge

of the court or anybody else by picking out the items and saying so and so when it is in the record.

By Mr. Godwin:

Q. Is the cash receipt basis, which they figure upon each year, different from the basis that they fixed in this report?

A. The report is based on a revenue, and this is on a basis of cash receipts, and they would be different.

Q. And all the audits have been on the cash basis?

A. Some sections of the audit are on revenue basis.

Q. What?

A. The sections Mr. Sebrell asked me about were on the revenue and whether paid or approved.

page 266 } Q. Do those sections that he deals with give any credit whatsoever for anything that is collected for past dates?

A. If the set-up in this statement was the total water rents, that would be taken into consideration each year and the credit would not have to be in two or three years.

Q. And he has charged off \$12,000, and suppose some of that \$12,000 in 1927 was collected in 1928, what credit would you give for that?

A. If they had collected anything which had been previously charged off, they should report it as income.

Q. And that would go in the cash receipts as shown in the book?

A. In the cash receipts and also in the revenue.

Q. Do you know whether or not it is in the revenue?

A. From this statement I don't know whether they collected any of that which was charged off.

RE-CROSS EXAMINATION NO. 2.

By Mr. Sebrell:

Q. You recognize the difference between cash receipts and revenue, do you not?

A. I do.

Q. Revenue would be the amount that was taken in from the operation of the plant during that year; that would be revenue, wouldn't it?

page 267 } A. Whether taken in as actual cash or accrued.

Q. Receipts would simply be the amount of money collected that year, whether for accrual for that year or not?

A. Yes.

Q. So you would accept the difference between cash receipts and actual revenue?

A. I would.

page 268 } Mr. Godwin: Under the head of "Capital Account" it is shown in this audit each year the amount of expenditures that have been made out of capital account for water purposes, and I would like to ask Mr. Taylor and Mr. Bliven, while we are examining these other witnesses, to simply take these audits and to mark against these items of replacement and for new additions. They are in here, but not segregated. They can do that on all of these.

Mr. Sebrell: I don't know whether they heard it.

Mr. Godwin: I simply want to distinguish between money spent for replacement under this capital account and money spent for new additions or new properties out of which they got a revenue. Will you take these audits and do that, and I will examine either one of you after that?

Mr. Sebrell: They do not exactly understand what you mean.

Mr. Godwin: Mr. Sebrell, he has not said anything about it.

Mr. Sebrell: He told me that he doesn't understand.

Mr. Godwin: Mr. Bliven understands.

Mr. Sebrell: He is not a bookkeeper.

Mr. Godwin: I will ask Mr. Taylor, the Superintendent of the Water Department.

Mr. Sebrell: Mr. Taylor wouldn't have any more idea than I would. You can do it as good as Mr. Taylor.

page 269 } Mr. Godwin: He wants me to have these gentlemen do it, and I prefer to have this one.

The Court: You can have anybody to do it you want, if you can.

Mr. Godwin: I imagine the man who is the head of the Water Department in Norfolk, and Superintendent of the Water Department, knows more about it than the gentleman who happens to be an accountant, and I want them to take the various items and mark against them what they have.

The Court: It strikes me as a right good size job.

Mr. Godwin: It is not any job at all. Will you go over these expenditures for capital account, Mr. Taylor?

Mr. Sebrell: Mr. Taylor, do you know anything about that—about the audits and bookkeeping?

Mr. Sebrell: If your Honor please, I think we had better proceed regularly about it. Mr. Godwin can ask anybody that he pleases to do anything for him privately.

The Court: Mr. Taylor has been on the stand, and I do not see any objection to him doing it if he can. Mr. Taylor knows whether he can do it or not.

Mr. Godwin: Mr. Taylor, while they are examining these other two witnesses, I would like to have you, the Superintendent of the Water Department—

Mr. Sebrell: No, you don't. If you want to examine the Superintendent, you put him on the stand.

The Court: He can have Mr. Taylor go in page 270 } the back room and take anybody back there that he pleases to help out in getting that information.

Mr. Godwin: Mr. Sebrell, I don't see why you should object to these two honorable men doing that.

Mr. Sebrell: I am glad you think that they are so honorable. I don't see why they should do it.

The Court: If Mr. Taylor can do it, he can appoint anybody that he wants to.

Mr. Godwin: Do you and the Superintendent of the Water Department mind going out there?

Mr. Taylor: I will have to be guided by the advice of the City Attorney.

Mr. Sebrell: Anything you know I have no objection to, but I do not want you to assume to know something you don't know and get from hearsay.

Mr. Godwin: Here is a statement in the audit of 1932 showing the purchase and installation of additional water meters. Were they for replacement or for additional meters?

Mr. Taylor: They were for additional meters—meters on flat service.

Q. You understand that these various things here were spent, do you not?

A. I think so.

Q. Will you take the Superintendent of the Water Department and while we are examining these other witnesses, which the court says do, make a list of whether that is page 271 } for replacement or whether it is for new and additional equipment?

Mr. Sebrell: Now, if your Honor please, I make formal objection that Mr. Taylor is a witness, and what he testifies to will be Mr. Taylor's testimony on oath. Now, when he calls to his assistance somebody outside, and that man's statement is brought into the court, that is a hearsay statement of some witness that is not sworn.

Mr. Godwin: I will put him on oath and ask if he checked it.

Mr. Sebrell: Let the witness do so, but you cannot bring in a statement made with some collaboration by an outside party.

Mr. Godwin: I will put them both on the stand.

Mr. Sebrell: All right.

Mr. Godwin: Each one of these audits has a statement in there of expenditure from the capital account, Mr. Taylor, and we want you to segregate those that were for replacement. If they were for replacement, put an "r" by them, but if not for replacement but for new equipment or new extension, from which a new source of revenue was to be obtained, mark "n" by it.

Mr. Sebrell: Is that to be out of the court room?

The Court: He can go out and bring in the statement, and you can ask about it. It is done every day in the court room, and I do not see anything unusual about it.
page 272 } Mr. Sebrell: Your Honor doesn't mean that it is unusual for him to go out and get information from somebody else and come back and give the information?

The Court: He has to come back and testify to it.

Mr. Sebrell: When he comes back to testify, he cannot testify to something that is purely hearsay.

The Court: If he states it as a fact, it is not hearsay. Nearly everything that we state is hearsay. There is mighty little that a man knows that he does not get from somebody else, or from some other source.

T. R. PETTIT,

a witness on behalf of the County of Nansemond, being duly sworn, testified as follows:

Examined by Mr. Godwin:

Q. Are you an engineer?

A. Yes.

Q. How long have you been an engineer?

A. Since 1919.

Q. Did you go out and make a survey of the properties of the City of Norfolk in Nansemond County?

A. I made a valuation survey, yes.

Q. Did you go over the physical properties?

A. Yes.

Q. What condition were those properties in?

page 273 } A. Very good.

Q. Have you been over them recently?

A. No, sir, not within the past two years.

Q. When you did go over them, what was the condition of the pumping station, the building and equipment in it?

A. Very good.

Q. What was the condition of the dam and spillway?

A. It was apparently all right.

Q. What was the condition of the standpipe?

A. Apparently all right.

Q. Do you know about the pipes?

A. No, sir.

Q. Are there any places that the pipes are uncovered that you went over?

A. There are some places, but I did not go over that in very much detail.

Q. Do you agree with Mr. Taylor when he testified here to-day that these pipe lines should last approximately seventy years?

A. I should say around sixty years—cast iron pipe.

Q. How much was that pipe line assessed at per foot?

A. On my assessment?

Q. Yes.

A. Three dollars per foot.

page 274 } Mr. Sebrell: I thought we understood yesterday that we would decide liability and then, if the court decides that there is liability, we would then go into the question of amount. I want to know whether you are examining him regarding the liability or the amount?

Mr. Godwin: I am going into that question only on the question of the pipe line. I am talking about the pipe line.

Mr. Sebrell: Is it for the purpose of increasing the assessment or for the purpose of determining liability? If we are going to take one part of the assessed valuation, we had as well take it all.

By Mr. Godwin:

Q. What is the cost price of that pipe?

Mr. Sebrell: I do not want to be prejudiced, and I reserve the right to put on testimony as to values.

The Court: All right.

By Mr. Godwin:

Q. What is the cost price of that pipe?

A. Today?

Q. Yes.

A. I have a quotation from Crane & Company, of Norfolk, with the main office in Chicago—

Mr. Sebrell: (Interposing) I don't know whether that establishes the market value.

The Court: I will hear what he has to say.
page 275 } Witness: I am reciting merely what their correspondence revealed.

Mr. Sebrell: That is hearsay testimony.

By Mr. Godwin:

Q. Have you made any inquiry to find out the cost of thirty-inch pipe similar to that? Have you made any investigation to find out the cost of that pipe?

A. Yes, sir.

Q. Did you make any investigation to find out the cost of it at the time you were going over it with Mr. Norfleet to assess it?

A. Yes, sir.

Q. What was the cost price of it when you were going over it with him to assess it?

Mr. Sebrell: If you can testify to what is the cost price I do not object, but if you are testifying from what somebody else said, I object.

The Court: If he has an opinion about the cost price, I will hear it. I don't know how much it will influence me.

Mr. Sebrell: I save the point.

A. The cost of the thirty inch pipe, at that time, was \$5.50 per foot, from the information that we had at that time.
page 276 } By Mr. Godwin:

Q. What does that include?

A. The delivery price in Suffolk.

Q. Does it include anything for rehandling it and taking it to the place where it is to be put in?

A. No.

Q. Does it include anything for the labor of putting it in?

A. No, sir.

Q. Does it include anything for the digging?

A. No, sir.

Q. Does it include anything for the purchase price of the land?

A. No, sir.

Q. What would it cost per foot to put in that pipe line?

A. It altogether depends on the location of it.

Q. Well, over the territory that they put it in; what would be the average cost of putting that pipe line in per foot?

A. I would not like to commit myself on that without some study of it.

Q. You do not have any idea about it?

A. No, sir, I would not. The reason I did not at that time

was the fact that we assumed \$3 per foot, which is approximately fifty per cent of the actual cost of the pipe, in the assessment.

Q. In other words, you all assessed it on the basis of one-half of the cost of pipe delivered in Suffolk?

A. Yes, sir.

Q. Without anything as to hauling it out, the labor of putting it in, or the land on which you laid it?

A. That is right.

(No Cross Examination.)

R. C. NORFLEET,

recalled as a witness on behalf of the County of Nansemond, testified as follows:

Examined by Mr. Godwin:

Q. Do you know when the dam across Lake Kilby was built?

A. I do not exactly.

Q. How old are you?

A. I was born in '61.

Q. Has it been there as long as you could remember?

A. Not this dam, no, sir.

Q. Has a dam been there?

A. There was a mill there but the dam was not as high as this dam is at the present time. I think, if my memory serves me right, it was built sometime in the early twenties.

Q. In the early twenties?

A. 1920 of this century. I did not work that territory at that time.

Q. There has been some testimony here that page 278 } that dams and all properties depreciate so much more in this community than they do in other communities. Have you a dam her in this county?

A. I have one myself near my home.

Q. How old is that?

A. Some two hundred years.

Q. Is it still in good condition?

A. Yes.

Mr. Sebrell: It has not been testified that dams suffer more in this section than other sections. A witness testified that pipe lines do.

Witness: Dams with age will improve.

Mr. Sebrell: That is what our witness testified.

Mr. Godwin: I assume I will be permitted to have the Au-

ditors who were here today, Mr. January and Mr. Martin, to get copies of these statements I wanted in the record from their books. Their books are not here today. They were here yesterday but not here today.

The Court: They can examine the books and get such statements as are connected with this matter.

Mr. Sebrell: I don't know that I catch exactly what that is. The statements of what?

The Court: Mr. Godwin remarked today that page 279 } he wanted his accountants to look over these books and check up on these figures that are involved in this litigation. I thought it was understood that they could go down and check them up.

Mr. Shultice: No.

The Court: Then they will have to bring them back. I will continue the case and let them bring them back.

Mr. Sebrell: If your Honor please there is no objection on our part now, or at any other time, that anybody can examine these books that they please, but to have this case continued and postponed to give the defendant in the case, or one of the parties, after they have heard the evidence on this side, time to go and see if he can verify or not verify those statements is something that I think is rather unheard of in court. That is what that means. Here is the purpose, and the only purpose that there could be, as I understand it, is to show, if he can, that the books of Norfolk City kept each year, certified by an independent Certified Public Accountant who made the records of a city in this state, from year to year, long before any water question has come up, and involving all the transactions of that city, beside the water questions, the question comes up whether or not those books are correct, to let them investigate to see if the Auditor is correct.

I say that unless there is something in the testimony page 280 } timony that would indicate to the mind of the court that there was something wrong in those books, something that the audit doesn't show, or does show, or something that these Auditors, or the man who holds the position of Auditor of the City of Norfolk as a correct accountant and a man who is a Certified Public Accountant comes here and says that he examined the books—unless there is something that shows there is something on the part of these people or the books of the City of Norfolk that would show a false statement or a fraudulent case here, it seems to me it would be right much to say. It would be like if I was trying a case in your Honor's court and the plaintiff gives testimony against me and I would say to your Honor "I don't know, they may be telling the truth", and your Honor may

have the conviction that they are telling the truth in a matter which comes not only to a knowledge but an accurate system of book keeping, and I would say to your Honor "I wish you would continue this case, I can't show you anything wrong about the books, I can't show you anything wrong about what the witnesses have testified to, but I want you to continue this case for two weeks and I want to go there and scour here and scour there to see whether there is anything".

The Court: What did you bring the books up here yesterday for?

Mr. Sebrell: To show if these statements were page 281 } questioned.

The Court: To say to counsel on the other side, "Here are the statements"; it is perfectly absurd; it amounts to nothing to hand them out and leave, and then drag them back and say you can't do it.

Mr. Shultice: May I say a word?

The Court: Yes.

Mr. Shultice: This is a petition filed quite a long time ago. Counsel on the other side have had knowledge for a period of, I think, about two years, that this assessment was going to be contested, and for a long time they have had a statement in regard to what the contest was that we would make.

Now, the City of Norfolk and the County of Nansemond have joined in the battle. A good many months ago, about sixteen or seventeen months ago, when I went into Mr. Sebrell's office, this was a live question there, and we expected to try this case last fall. My first acquaintance with it began then and has continued since then.

Now, counsel is charged with getting the evidence that lies at his feet before the day of trial. I am perfectly willing to go the whole length that your Honor indicated you would go, if yesterday was the first time that these gentlemen had any possible opportunity of looking up these accounts; but I say if these books of account had been put over in the page 282 } Clerk's Office a year ago and left there for them to examine at any time that suited them, and they had not examined them up until today, your Honor would not continue this case and give them a day, or two weeks, or a month, to examine them. You would say that they had not properly prepared their case.

I say that these two communities joined battle a long time ago, and counsel must certainly have had some knowledge of the charter of the City of Norfolk; they must have known something about the government of the City of Norfolk, and, if they did not know it, it was their own fault.

Now, I understood they said yesterday was the first time

that they saw these audits, made up by outside auditors. As a matter of fact, the City charter compels the City to have an auditor not in the employment of the city, except for that specific service, to make an audit. That audit is a check on its auditor and its officials, and it goes further and compels the publication of that audit that all may see it, and anybody, at any time during business hours can go to the City Hall and get as many copies of this audit, in reason, as he wants.

Now, these gentlemen must have known that, and if they did not do it they simply have made no effort to inform themselves of what they could do towards preparing their case. These audits were not secret papers. Anybody could get them. I have had copies of them in my office year by year. I

have as many in my office as are on this table.
 page 283 } Everybody has them, and these people seem to be the only people in Eastern Virginia, so far as I know who did not know that they could get them. They say to go down there and take this, or pick this or that out and bring it up here and confront us with it again, just as they did with the testimony of this witness just now; and, when he was put on the stand, knowing the ability of my friends, I trembled in my shoes for fear that they had found some wonderful thing, and yet in fifteen minutes he was in absolute accord with the testimony that we put on yesterday.

So I say, may it please the court, while we haven't anything to conceal in this matter, I do not know when it will be finished; they will go down there and pick something that they don't understand, or maybe something that some expert does not want to understand, and we will come here with some half way thing, just like we have gone into after lunch today.'

So I think that they are not entitled at this time to any further consideration. Every one of these papers they could have had in their hands ten days after the petition was filed.

Mr. Godwin: I just want to say this, in response, that this case has been on the docket a long time. The reason it has not been tried before is because I have been agreeing to continuances for Mr. Sebrell's benefit while he was Imperial Potentate of the Shrine. That is the reason it has
 page 284 } not been tried before.

As far back as September 20, 1933, I wrote to Mr. Sebrell and put a copy of my letter in the files, and requested this information.

Note: This letter was filed and is as follows:

"September 20th, 1933.

"Mr. Jonathan W. Old,
Assistant City Attorney,
Norfolk, Virginia.

"Dear Mr. Old:

"I wish to acknowledge receipt of your letter of September 19th, stating that you will be ready for trial on October 5th in the matter of the Tax Application of the City of Norfolk, and I am requesting that you furnish me with a Bill of Particulars in this matter, showing the following information:

"(1) The purchase price of all land owned by the City of Norfolk in Nansemond County, which includes all land at Lake Prince and adjacent thereto, and all land purchased for the purpose of constructing pipe lines from Lake Prince to the Norfolk County line.

"(2) The cost of pipe lines, including installation and standpipes between Lake Prince and Norfolk County line.

"(3) Cost of the pumping station at Lake Prince and all machinery therein.

"(4) Cost of the dam and spillway at Lake
page 285 } Prince.

"(5) Cost of cleaning up and preparing the bottom and basin of Lake Prince for waterworks purposes.

"All of the above items are to include necessary expenses, such as engineering and overhead in constructing said Lake, dams, pumping stations and pipe lines.

"(6) The rates charged for water to consumers in the City of Norfolk and all consumers outside of the City of Norfolk for the various years in question.

"(7) The amount of water sold to consumers inside the City of Norfolk and to all consumers outside the City of Norfolk during the years in question.

"(8) The gross receipts from the sale of water to consumers outside the City of Norfolk and all consumers within the City of Norfolk during the years in question.

"(9) The amount of bonded indebtedness incurred and issued for the construction of Lake Prince and the additional water supply of the City of Norfolk; the amount of depreciation charged against same each year since constructed, and the amount of sinking fund installments paid on said bond issue; the rate of interest on said bonds, and whether, or not,

said interest has been paid at the various interest payment periods.

"With kindest personal regards, I am,

Very truly yours,

CBGJr/R"

page 286 } Mr. Godwin: I have never gotten it. I had no access to the records of the City of Norfolk. If it does like the county does, it makes one copy for each member of the Board of Supervisors, and that is the end of it.

Even as late as October 13, 1934, I had not gotten the information, and I wrote that unless he produced the books I would have to ask the court to continue the case long enough for me to have a chance to investigate it, and had to say I would issue a subpoena *duces tecum* to produce them.

Note: This letter just referred to is filed, and is as follows:

"October 13th, 1934.

"Mr. John N. Sebrell,
City Attorney,
Norfolk, Virginia.

"Dear Mr. Sebrell:

I wish to acknowledge receipt of your letter of October 11th acknowledging the change of date.

"As long time ago I wrote your office asking for certain information in reference to this case, which information I feel that your office should give on a matter asking for relief from tax assessment. In addition, I have asked for the audits of the Water Department and the various financial statements submitted to the Council by the Superintendent of the Water Department, or those charged with the duty of furnishing financial statements. None of these have I re-
page 287 } ceived.

"Unless they are sent to me in a reasonable time before the trial of this case, it will be necessary that I ask the Court for subpoena *duces tecum* and the matter continued until I have reasonable opportunity to go over the reports thoroughly.

"All of these will have to be filed, as I shall certainly ask for their production, and demand that they be submitted, and I will thoroughly appreciate it if you will let me have them at once.

"Very truly yours,

CBGJr/R"

Mr. Godwin: The county has placed a tax on them, and they have come here with the burden to show this court fairly and squarely that they should not be taxed, and now do not want us to delve into their books at all. They came here yesterday and put books so high counsel could not see over them and say "Here they are". Last night they wanted to take them away, for fear that they would catch fire, and I told them that they could take them if my Auditors could see them in Norfolk, and I think Mr. Sebrell understands that.

Mr. Sebrell: I do not.

Mr. Godwin: They went away with the understanding if I wanted information out of these books I could get it out of the books in Norfolk. Here is the other letter (Referring to letter of October 13, 1934).

Mr. Sebrell: You are not going to put them page 288 } in without putting the replies in.

The Court: You can put in the replies if you have them.

Note: Later (on December 3, 1934, at the next hearing of this matter), the following letter was filed, but, for convenience in reading the record, is here copied, and is as follows:

"October 18, 1934.

"Mr. Charles B. Godwin, Jr.,
Attorney for the Commonwealth,
Suffolk, Virginia.

"Dear Charlie:

"I have yours of the 13th. In the Bill of Particulars, which I sent you sometime ago, I covered in full detail all the facts and figures appropriate and pertaining to our contention in the water case. The fact is, I gave you not only my contention but the evidence in support, and endeavored to make the statement as full and complete as I could. I now have your letter asking that we furnish, in addition, audits of the Water Department and various financial statements submitted to the Council by the Superintendent of the Water Department, or those charged with the duty of furnishing financial statements.

"In this regard, I beg to advise that we have no financial statement of the Water Department, in audit or otherwise, other than that showing the totals for the year, and these were covered in my Bill of Particulars. We have no
page 289 } separate bookkeeping system for our Water Department. All books are kept by the City Auditor.

“With reference to the Water Department, the Cashier makes a daily report to the City Auditor of his receipts and a daily report of the deposits of the money collected to the Treasurer. At the end of each month, these receipts are audited by the Auditor and the totals are entered upon his ledger or cash book. The disbursements are made upon vouchers from the particular Division or Department and, when these vouchers are paid, they are entered by the Auditor upon his books.

“At the end of the year an independent Certified Public Accountant is employed to make an audit of the City’s entire transactions. He makes a complete report thereof, and this report will disclose the total receipts and disbursements for the year. There is no independent audit made of the Water Department. That audit is included in the general audit.

“I will be glad to produce at the trial any record we have which you may desire. I shall have present the books showing the entries made by the Auditor, and also a copy of the audit, as made by the Certified Public Accountant, for each of the years involved. If there is any other record in our possession which you desire produced at the trial,
page 290 } please let me know definitely which one, and I will have it present.

“I sincerely say to you that we are anxious to give all the information that may be in our possession which pertains to the case, and I go further and say to you, in the same spirit, that if you desire to come down and look over any of the records in this office, I will see that that privilege is accorded to you.

“Very truly yours,

S:M

JOHN N. SEBRELL,
City Attorney.”

Mr. Sebrell: Mr. Shultice has stated to your Honor that the motion ought not to prevail. We turned the books into court. I am afraid my friend misjudges the purposes of a subpoena *duces tecum*, to bring books to court. That does not require me to send the books up here, out of the City of Norfolk, for him to make an audit. It requires us to produce them in court. There has never been any necessity for any subpoena *duces tecum*, and there is no occasion for his statement in regard to it. He wrote us for the information, and there came back a letter saying any book or statement that he wanted to designate it. We brought books that the law

did not require us to bring, although the statement by the Auditor was sufficient. We brought the books because they could verify the statements, and if there had been on cross-examination a question "Will you show me in page 291 } your books where that is", we would say yes.

They were not brought here for inspection, but there was an audit made by another auditor.

Suppose the case had been a different kind of case from what it is; suppose it was a suit against a bank, and they brought a number of items and these books were brought into court, in order that any question might be answered as to that particular item in controversy, the witness could turn to the book of original entry and show that transaction. That is what these books were brought for. After that testimony is brought out, a man has testified and the opportunity has been given counsel to cross-examine as to every item in that account that might be shown by the books, do you think it would be fair to a bank keeping accounts of hundreds and hundreds of people that somebody interested in a civil action could go to the bank to see whether the cashier is correct? I say that is going right far in a financial institution, and if it is so with regard to any other private corporation's affairs, far more it should be that they should be sent by this court down to the City of Norfolk, so auditors can investigate in a case tried in this court, to see whether Norfolk City and its bookkeepers and auditors have been honest in the administration of its affairs. I say it is a reflection upon the City to say we will send auditors there to see whether you have been fair. It is

a reflection upon the City and it is not in accordance with business, and I do not believe it is in accordance with law, because I do not think the court could have appointed officers for the purpose of going to examine them. They were in court, and it is a matter of proof.

The Court: I do not think it is any reflection at all any more than it is a reflection to have the City of Norfolk, through its proper representatives, to say an audit should be made in order to let the public see what they are doing.

Mr. Sebrell: You are going to have an audit made by a special somebody who is fighting us.

The Court: You do not know these gentlemen much better than I do who have charge of the affairs. I have no idea that the examination will reveal anything. I think it is a vast waste of time. That is my thought. But I think the court ought to be particularly careful in not cutting off any source of information that litigants may think that they have. Where it is in the keeping of the opposite side, I do feel like the op-

posite side can well afford to take the position that they ought to open their hand and their books and say "You look all you please, because there is nothing there to be afraid of". If we err at all, I think we should err on the side of bringing in all the evidence. When you exclude it, every presumption is to be made against you.

Mr. Sebrell: We do not ask to exclude it.

page 293 } The Court: I understood you to say that they could go there and check it up. I may have misunderstood you. We can adjourn until tomorrow and bring the books up here and let them go to work on them. I think it is a perfectly vain thing. I have no idea that it will help anybody.

Mr. Godwin: Your Honor, this is a case that involves a set-up of seven or eight years of a corporation spending as much money as the City of Norfolk. If they bring these books back I can sit down and ask a man to go through them and give me information, and we sit here and wait for that to be done. It is taking the court's time, and it is taking these gentlemen's time, and everybody else's time, and I don't know how much time it would take. I do not see any reason for us sitting here while the Auditors do their work in checking the records. If Mr. Sebrell wants to come back and sit here until I get through that sort of thing, it is up to him.

Mr. Sebrell: I want to say, your Honor, I think the statements I have made show the reasons we have. We have no idea that this will reveal or change the status in any particular, but it is a waste of time. If your Honor wants it, I am going to say we are perfectly willing to have them make all the audit they please, provided they give us a copy of their audit a sufficient length of time before we
page 294 } come back here and go over another trial. Then, of course, we want to have some opportunity to see about that.

The Court: They will give you a copy of the audit just as soon as it is made up.

Mr. Shultice: Auditors make right many copies, and will they make us two copies?

Mr. Godwin: We do not expect to make a complete audit of their books.

Mr. Shultice: That is what they should do.

Mr. Sebrell: We all want to get the information. I do not believe that the two communities of Norfolk City and Nansemond County are sufficiently antagonistic to each other to want any advantage. I think if these Auditors do not find something in the aggregate sums that they ought to go to the Auditor's desk and say "Where do you find this?" so that

they may find the information that our Auditors had and the same information which the general Auditor has when he goes to audit these books.

The Court: I do not think an audit would amount to anything unless they can seek all the information that they can get—unless they find out all the information about it. It does not help me any.

Mr. Godwin: That is understood.

Mr. Shultice: What is understood? Is it going to be an audit, or is it just going to be going there to get some isolated figure that you or your auditor may say means
page 295 } this when we have knowledge that it means something else? Is it to be a complete audit, or does it mean you will gather some figures here and there?

Mr. Godwin: I want information, and I want the Auditors to get it, and I will give you all a copy of it in ample time so if there is any question about it you can see what is wrong. I can ask them to produce every one of the books that they brought here yesterday and produce them in evidence. The Auditors could pick these particular things out. We can ask that they put those things in evidence, but they clutter up the record.

Mr. Sebrell: You could not do it under the record.

Mr. Godwin: Mr. Taylor.

Note: Mr. Walter H. Taylor was then called to the stand for further examination by Mr. Godwin:

WALTER H. TAYLOR,

a witness on behalf of the City of Norfolk, recalled for further cross examination, stated as follows:

We cannot give you the information you wish. The Auditor's report is not full enough to resolve intricacies of seven years ago. There are many accounts in there that are for sewer and water paving, without stating how much is for sewer and how much is for water and how much
page 296 } is for paving or what the water is for. So that we could not give you the information you want without going over our office records to see what was done under that special appropriation.

Mr. Godwin: Can you give the amount of replacement?

Mr. Taylor: I can't without giving the history of each transaction.

Mr. Godwin: Just have a seat there, Mr. Taylor.

Q. Have you got 1932 audit there?

A. Yes. What page?

Q. Page 44?

A. All right.

Q. On the top of page 44, Mr. Taylor, you have the first item for expenditures out of the bond fund an item, "Purchase and installation additional water meters"; that is not replacement, is it?

A. No.

Q. Now, you have got a second item, "Payment to the Coburn Hardy Realty Company, balance due on contract regarding water mains"; that is not replacement, is it?

A. It is new.

Q. It is new mains?

A. Yes.

Q. Now, the third item is in reference to Morning Side plant. That is new?

A. Yes.

Q. Now, how about this Moore's Bridges item?

A. The construction of quarters at Moore's Bridges Pumping Station, an expenditure of \$4,600, is for the moving and putting in livable condition houses that were built back so far beyond my time I don't know when they were.

Q. That is quarters that are leased or rented?

A. At the time that that rehabilitation was page 297 } made, they were not leased. At that time we furnished quarters for the stationary engineers, engineers at the Moore's Bridges Pumping Station, so that they would be available and accessible at certain times. In other words, when a man had served his eight hour duty, they required him to stand by the next eight hours so as to be on call. Those quarters were furnished without any contribution from the engineer for the quarters. It was at the City's expense and had been prior to that time from the beginning of the Water Works.

Q. Since they had been constructed there, they are not leased?

A. Since their rehabilitation, or soon thereafter, the occupant was required to pay a certain sum for living there.

Q. For rent?

A. Yes. It was accounted for in his salary.

Q. In other words, they were old, but you all improve them, and now rent them?

A. They are accounted for in the salary. In other words, we might have paid a man \$135 or \$145 a month previously and so much of that salary was taken off, say ten dollars or twenty dollars, or whatever amount was fixed by the City

Manager, and he paid often in his annual payment the set-up by the City Council.

Q. Since you have constructed those quarters, has the salary of any one of those men been increased or diminished by it?

page 298 } A. They have all been decreased.

Q. Been decreased?

A. Yes.

Q. And that decrease is due to the fact that you charge him rent for it; is that right?

A. In part only.

Q. What do those quarters pay rental per month? What is the total amount of rent you get for those quarters?

A. I couldn't answer offhand. At that time there were four houses, and I do not recall what the City Manager has established as a prerequisite going with each one of those houses.

Q. As much as ten dollars a month apiece?

A. More than that.

Q. More than ten dollars a month apiece?

A. Yes.

Q. Now, the fifth item is "Installation of six inch water main between Bluestone and Elkhorn Avenues"; is that new?

A. I couldn't tell you whether that is a brand new water main or whether it is an installation due to the fact that the previous installation was not adequate for the purpose.

Q. How about the water mains of the welfare centers? That is new, isn't it?

A. Yes, that is new.

Q. The next one Bastian Road?

A. That is new.

page 299 } Q. Fire hydrants 23rd Street?

A. That is new.

Q. Extension of water mains in the next item; that is new, isn't it?

A. I think so.

Q. The next item is new, isn't it?

A. I cannot tell whether that is entirely new or whether it is the construction of a water main for a main that had been outgrown and was obsolete and inadequate for that purpose.

Q. How about the next item?

A. Construction water main between Elnora Street and Hillside Avenue, Ocean View; I think that is new.

Q. How about Lafayette Boulevard?

A. I am certain that that was new.

Q. The installation of drainers; is that new?

A. That is rebuilding of filters that were built soon after

1918. The filters had become inoperative and would not filter the water, and they had to be rebuilt since then, I think from 1918 or 1919 to this date which is 1932.

Q. How about the development of Lake Prince and Bensten water supply? That is carried in several of these audits; is that something that is being paid for yearly for construction work?

A. I cannot tell you about that particular item. It was a capital outlay account in connection with that page 300 } project.

Q. These water mains in various sections of the City, they are now mains, are they not?

A. That was new.

Q. "Improvement Thaille Street"?

A. Those P. B. & S. matters carried only enough money for the installation of a hydrant or installation of a valve prior to the pavement. I cannot tell you without our Department records as to just what portion of that appropriation was used for water purposes and what the nature of it was.

Q. This storm, water and sanitary drain on Worcester Avenue, was that a street or a water improvement?

A. That was a sewer.

Q. That has no business in there at all, has it?

A. I don't know how it came about. The P. B. & S.—there was some portion of it supposedly for water purposes, but it does not look so in this case, but it is only \$105.43.

Q. Then, with the exception of four or five thousand dollars all of the rest of the money that was spent during the fiscal year 1932 for maintenance and replacement and stuff in connection with the water was spent out of the operating funds, wasn't it?

A. Not a cent of it.

Q. This is all out of the capital fund?

A. Yes, and that is separate and distinct from the maintenance and operation of the Water Department.

Q. This is all that was spent out of capital page 301 } fund that year?

A. For that year?

Q. Yes.

A. Out of capital fund?

Q. Yes.

A. I guess that is about right.

Q. All the rest of the expenditures came out of operating expenses?

A. All the rest of the expenditures for the operation of the

Water Department was appropriated in the budget under the Department account.

Q. What do you mean by that—that all of the rest of the funds were appropriated by the Council?

A. In the budget. The bond account comes along at any time.

Q. Now, in 1931—

Mr. Sebrell: Will it serve your purpose that all the expenditures came out of the bond account and every one of them is in the bond account?

Mr. Godwin: I assume every one came out of the bond account.

Mr. Sebrell: For the purposes of this case, I am willing to admit it.

Mr. Godwin: Are you willing to admit that none of these were for replacement?

Mr. Sebrell: No, I will not admit that. We page 302 } do replace out of the bonds sometimes. It is not a temporary replacement—not anything that is an ordinary expense,—and I am willing to say that nothing that we have put in our expense account comes out of the bond appropriation.

Mr. Godwin: I do not mean that.

Mr. Sebrell: I am willing to stipulate.

Mr. Godwin: Are you willing to stipulate none of these are for replacement?

Mr. Sebrell: I don't know what you mean by replacement.

Mr. Godwin: Are all of these expenditures for bond fund in connection with the Water Department for improvements for which you intend to derive additional revenue?

Mr. Sebrell: I don't know what you mean by additional revenue. We do not get any revenue from any of them, but they serve exactly the same purpose as the balance of our plant serves. It takes a part of our plant. Sometimes it maybe that we have replaced something that has worn out or it may be the extension of a new line. I do not see the difference between them. I am willing for you to have it either way, I don't care what it is.

page 303 } By Mr. Godwin:

Q. Now, in the year 1931, your first item is additional water mains; they are new and put into new places. Now, here is an item of payment to certain parties of amounts due them?

A. That is new.

Q. What is this third item; is that new?

A. New.

Q. The fourth item; is that new?

A. It is either new or replacement of an obsolete small line which would not render service.

Q. Did you have a line down St. Denis Avenue?

A. I can't tell you from here.

Q. How about this item here?

A. Water connection at Chapel Street between Main and—as well as I can recall that—

By Mr. Sebrell: (Interposing)

Q. Do you recall it?

A. Not with certainty.

Mr. Sebrell: There is no reason why he should be guessing just to answer your questions.

Witness: I would like to look at the record because I cannot recall.

By Mr. Godwin:

Q. Well, that thing there, is that new?

Mr. Sebrell: I object.

Mr. Godwin: I am getting the information I want.

Mr. Sebrell: This witness says that the page 304 } chances are that that is correct. He said "Mr.

Godwin, I cannot tell you these things unless I look at my records." Now, he makes the witness testify that the chances are that that is so and so. I do not think he should be subjected to that.

By Mr. Godwin:

Q. Let me ask you this, Mr. Taylor—

A. (Interposing) There are none of these accounts that are or the nature that you believe them to be, in my opinion. We do not charge to bond account ordinary repairs. They are either extensions of lines or installation warranted on the capital outlay and add to the value of the plant.

Q. Add to the value of the plant?

A. Yes.

Q. And for which you ordinarily get an additional revenue from?

A. I suppose so.

Q. That is true of all these items in capital outlay, is it not?

A. All capital outlay add to the value of the plant.

Q. Now, Mr. Taylor, if these gentlemen do not want you to testify—

Mr. Sebrell: (Interposing) I object to that statement. I do not object to his testifying, but I do object to his testifying to something that he does not know about.

Mr. Godwin: I assume that the Superintendent page 305 } of this department in Norfolk will know his work just as well as anybody, and I believe that he does.

By Mr. Godwin:

Q. If you cannot remember all of these articles, and you do not want to guess at them, or they do not want you to guess at the items, would you by yourself check these records and let me know against which of these exhibits which have been introduced in evidence are replacements and which new and additional equipment?

Mr. Sebrell: Didn't you ask him to do that just now, and he said that he couldn't do it?

Mr. Godwin: I will stay here a week to get it done one way or the other.

The Court: Do you mean to make the statement and bring it back later?

Mr. Godwin: Yes, sir, if he wants to.

The Court: He can do that.

Mr. Godwin: He says that he will make up the statement; is that agreed to?

Mr. Sebrell: A statement of whether new material was put in or replaced old material?

By Mr. Godwin:

Q. Mr. Taylor do you understand what statement I want you to make?

A. I can tell you what the expenditures are for page 306 } from the office records, but I cannot do so here.

Q. Had you rather do it from the office records, or do it now?

A. I can't do it now.

Mr. Godwin: That is agreed, that he will make it up from the office records?

Mr. Sebrell: If he wants to, but I reserve to myself the right to make objection at the time. I have no objection to doing anything that he wants to, but when it comes to intro-

ducing the testimony, I reserve the right to object to anything I think should be objected to in this case.

By Mr. Godwin:

Q. And then whether all of these items which are for the cost of new buildings, or the improvement of those buildings, machinery and equipment, they are such as have produced an additional revenue to the Water Department?

A. I can't tell you that.

Q. Sir?

A. I can't tell you here because I would have to analyze the report to find out what they represent.

Mr. Godwin: I think that the only way to get it is to let him file the statement.

The Court: All right.

Mr. Godwin: With that in evidence and the right of these auditors to make these tests, we will conclude page 307 } our case.

Mr. Sebrell: What time does your Honor want us to come back?

Mr. Godwin: I do want to ask one more question.

Mr. Sebrell: Of course.

By Mr. Godwin:

Q. Where is the end of the corporate line of the City of Norfolk down at Pine Beach?

Mr. Sebrell: How can he tell?

Mr. Godwin: Oh, Mr. Sebrell, leave the witness alone.

Mr. Shultice: There is a map.

A. There is a map of Norfolk and vicinity. The corporate line at Pine Beach,—the Naval Base is in the vicinity of what I presume you allude to as Pine Beach?

By Mr. Godwin:

Q. Yes.

A. The corporate line of the City of Norfolk is on this map not far from the words "Cottage Park", shown in blue and in yellow, and marked "Norfolk City line". It runs from that point on the shore of Chesapeake Bay to Granby Street at Masons Creek. It follows Granby Street southward to the Virginian Railway. It follows the Virginian Railway all the way southward across the Eastern Branch to its intersection with Berkley Avenue Extended, and runs

westerly along the south side of Berkley Avenue
page 308 } Extended and a line through the coves to the
Southern Branch of Elizabeth River besides the
word "Portsmouth".

Q. Is the Naval Base within the corporate limits of the City of Norfolk?

A. Yes.

Q. When were they taken in, do you know?

A. In 1923.

Q. The Naval Base was included within the corporate limits?

A. Included in the limit described by the decree of Norfolk County Court.

Q. Is St. Helena in *in* the corporate limits of the City of Norfolk?

A. St. Helena is in the corporate limits of Berkley Ward of the City of Norfolk.

Q. Are all of the Federal properties which you furnish water to down there within the corporate limits?

A. I think that they are. Yes.

RE-DIRECT EXAMINATION.

By Mr. Sebrell:

Q. Mr. Taylor, in reference to those houses you have down there at Moore's Bridges Pumping Station, isn't it a fact that the employees were standardized—that is, that these houses furnished down there are taken as a part of the salary of these employees?

page 309 } A. (No answer.)

Q. Don't you know that the groups of employees in the city have been classified?

A. The employees were standardized. In other words, all stationary engineers were fixed at one salary, and these are stationary engineers that occupy these quarters. The perquisites are furnished, including heat and light in the houses, and were set down at a certain figure. I think the standardization prevails today, and that salary is different from what it was prior to standardization.

Q. That, however, as you stated it, was a consideration in regard to the salary of the men who occupy these houses?

A. Yes.

Q. Mr. Godwin gets up and asks again about maintenance. Is there any item, anything put in the permanency of the plant, that comes out of anything except the capital account?

A. No.

Q. So none of the operating expense or maintenance has been incorporated in the permanent part of the plant?

A. No.

Q. Mr. Godwin also asked you, when he read from the list of these items that were paid for out of the bond fund balance, the general question if all the other expenditures were for repairs and maintenance and so forth; I want to ask you if there was at any time any of the operating page 310 } expenses, or the repairs that are not in the depreciation—were any of those items paid out of the capital account?

A. No.

Q. Was there anything else put in the operating account in the expense account except the cost of operation with the minor repairs and those which are not involved in depreciation?

A. I have stated on several occasions that depreciation is that which ordinary maintenance cannot put back into the plant, and that I stand by.

Q. And none of them has come into your expense account?

A. No.

The Court: I can hear you gentlemen on the 26th of November.

Mr. Sebrell: I think we had better have it understood what we are to do when we come back. I want to know when we come back if it is as to what they find in the audit.

The Court: Unless you put on something else. I understand that they will deal with the audit as they find it down there. We are not going over this general matter any more.

Mr. Godwin: There have been certain requests for information that they were to put in the record.

page 311 } Mr. Sebrell: I have not kept any account of it, and I do not want any statement made that they have asked for information and we have not given it. If you give it to me in writing—

Mr. Godwin: I asked it in the record.

Mr. Sebrell: I hope I will never have it written out.

The Court: Suppose you state it now.

Mr. Sebrell: Don't you think Mr. Godwin might furnish me a statement of what he wants me to produce?

The Court: I think so.

Mr. Godwin: I don't want you to give me anything. I will ask these gentlemen here for it.

Mr. Sebrell: I represent the applicant in this case and all that is to be furnished in this court will be furnished by me.

The Court: I think you should tell him that.

Mr. Godwin: All right, sir.

The Court: Have you any date you prefer—the 21st or 26th?

Mr. Sebrell: I used this sheet just now in examining Mr. January, and I want to file it in evidence.

Mr. Godwin: Mr. Hilton is supposed to file a detailed statement of operations.

Mr. Sebrell: I want to file it—it is already in evidence as evidence as Exhibit No. 2. It is understood that the audit of the Special Auditor of the City of Norfolk and page 312 } the report of the Director of Public Works concerning the Water Department as made to the City Manager for each of the years 1927, 1928, 1929, 1931 and 1932 are introduced in evidence in this case.

The further hearing of this matter was adjourned until November 26, 1934, and later adjourned to December 3, 1934.

EXHIBITS.

These papers were turned over to Mr. Powell, Clerk:

Exhibit No. 1, which is work sheet.

Exhibit No. 3, a tabulation, printed.

Exhibits Nos. 4 and 5, letters filed from Mr. Godwin to Mr. Sebrell.

page 313 } Suffolk, Virginia, December 3, 1934.

The Court met pursuant to adjournment.

Present: Same parties as heretofore noted.

W. P. JORDAN,

a witness on behalf of the County of Nansemond, being duly sworn, testified as follows:

Examined by Mr. Godwin:

Q. Please state your name, occupation, and residence?

A. W. P. Jordan; certified public accountant; Norfolk, Virginia.

Q. How long have you been engaged in that work, Mr. Jordan?

A. About twelve years.

Q. As Certified Public Accountant, have you audited the books of the City of Norfolk?

A. I have.

Q. For what period?

A. 1930, '31, '32 and '33, and at present I am engaged in the 1934 audit.

Q. Have you, since the beginning of this case, been back over the records of the City of Norfolk and checked the audits made of the City of Norfolk for the years 1927, '28, '29, '30, '31 and '32?

A. I have, and, in addition, for the year 1933.

Q. Are those audits as made correct?

A. They are.

page 314 } Q. Have you taken from those audits and the books of the Water Company a detail operation sheet for the years 1927, '28, '29, '30, '31, and '32?

A. I have, and also for the year 1933.

Q. Mr. Jordan, have you figured the operations of the company on an accrual basis?

A. I have.

Q. Have you also figured it on a cash basis?

A. I have.

Q. Does that audit show both bases?

A. It does.

Q. Have you also shown in the audit that you have made the amount of revenue obtained from sources outside of the City of Norfolk?

A. I have.

Q. Have you listed in that audit that you have recently prepared the number of fire hydrants in the City of Norfolk?

A. I have.

Q. Have you also shown in the audit the revenues derived from Federal reservations and public carriers for the years in question?

A. I have, with the exception for the years 1927 and 1928. That information was not available at the time I made this report.

page 315 } Mr. Godwin: I wish to introduce that audit in evidence.

Mr. Sebrell: I would like to look at it to see what it is. The Court: I will have to pass on it anyhow.

Mr. Sebrell: The Commonwealth's Attorney told me on Saturday that he would furnish me with a copy, but I have not seen it.

Note: The audit referred to is filed marked "Exhibit W. P. Jordan No. 1, December 3, 1934".

By Mr. Godwin:

Q. Mr. Jordan, for the year 1927 what were the gross revenues of Water Department of the City of Norfolk?

A. \$854,371.26—these revenues as appear on the audit report.

Q. Now, were there any charge-offs for that year?

A. No charge-offs applicable to the year 1927.

Q. Now, what did operation expense amount to?

A. \$237,149.96.

Q. Which left a profit of how much?

A. It left a profit of \$617,221.30, exclusive of interest on the bonded indebtedness and annuities, sinking fund contribution.

Q. Financial expense: The interest on the bonded indebtedness amounts to how much for that year?

A. \$454,935.17.

page 316 } Q. Leaving a balance of how much?

A. \$162,286.13, exclusive of annuities.

Q. Your statement shows there the sum of \$61,750 added to that, which makes a total profit of \$224,036.13; what is that \$61,750 added for?

A. That is estimated basis of rental from fire hydrants for the year 1927.

Q. And upon what basis was that made?

A. That basis was made at \$50 per year, which is the minimum rate charged by the City of Norfolk for fire hydrants in South Norfolk and Norfolk County.

Q. What is the maximum rate charged to South Norfolk and Norfolk County?

A. \$100 per year.

Q. And had that been figured on the maximum basis, it would have shown a figure of probably \$123,000, would it not?

A. That is correct.

Q. Or double the amount shown?

A. That is correct.

Q. In turning to Exhibit D, which is the last exhibit in the book, that exhibit shows the operation of the Department for the various years on a cash basis, does it not?

A. That is correct.

Q. Now, for the year 1927 what were the gross receipts of the Water Department?

A. \$853,085. That takes in collections in 1927—
page 317 } the 1927 item and prior.

Q. Were any of those items, when collected, taken back and credited to the previous years for which they were charged?

A. They were credited to the accounts receivable of the Water Division, but they reported as cash collections for 1927 on the City's books.

Q. Were they taken back? For instance, if there were any uncollected bills for 1927, which reduced the gross receipts for that year, were the amounts collected for the previous year taken back and credited to the gross receipts for the preceding year?

A. No. That was the 1927 cash account of the City.

Q. What did you say were the gross receipts for that year?

A. \$853,085.

Q. Now, the expenses were the same as shown under the other basis?

A. That is correct.

Q. That left a net operating profit, exclusive of interest, of how much?

A. \$615,935.

Q. Now, after deducting the financial expense of interest on bonds, what was the net profit?

A. \$161,000.

Q. And by adding the minimum for fire protection, which is charged to consumers outside, it shows a net
page 318 } profit of the Water Division for that year of how
much?

A. To consumers outside has nothing to do with this amount.

Q. You misunderstood the question. After adding to the net profit of \$161,000, the amount set up for fire protection on the basis of the minimum charge to consumers outside, how much does the profit show?

A. \$22,750.

Q. And, of course, if that was the maximum amount charged to consumers outside, that figure of \$61,750 would be twice that size?

A. That is correct.

Q. Now, without going into the detail of all of these figures, as the audit shows them, what was the net profit, after deducting all operating expenses and financial expenses for the year 1928, on the accrual basis?

A. On an accrual basis, including the estimated amount you have for fire hydrant purposes, the net profit was \$213,021.

Q. For 1929?

A. \$192,113.

Q. For 1930?

A. \$243,148.

Q. For 1931?

A. \$210,201.

Q. For 1932?

A. \$290,199.
 page 319 } Q. For 1933?
 A. \$257,113.

Q. And over the seven year period, what were the gross profits of the Water Department?

A. Including estimated rent for fire hydrants?

Q. Yes.

A. \$1,629,834.

Q. Now, exclusive of fire protection, what was the gross profit for the seven year period?

A. \$1,181,634.

Q. Mr. Jordan, in the year 1928 there were no charge-offs made on the books of the Water Department, were there?

A. There were not.

Q. In 1929 what were the charge-offs made?

A. \$33,724.

Q. You have given credit exactly as the books show, have you not?

A. That is correct.

Q. In 1930 there were no charge-offs made, were there?

A. No.

Q. In 1931 what were the charge-offs?

A. \$22,024.

Q. In 1932 what was the charge-off?

A. \$12,235.

Q. And in 1933?
 page 320 } A. \$41,694. This amount includes some charge-offs applicable to 1933 and prior years, which were charged off in January, 1934, amounting to \$22,000.

Q. Taken in this \$41,000 there were some charge-offs in 1934?

A. Yes, but they were applicable to 1932 and '33.

Q. How much was that charge-off in 1934?

A. \$22,000.

Q. \$22,000 of the \$41,000 was not charged off until 1934?

A. That is correct.

Q. With the exception of the \$22,000 item, these figures conform exactly with the City's books as they were charged off?

A. That is correct.

Q. Now, that allows them a charge-off of \$109,000 approximately for the period of seven years, does it not?

A. That is correct.

Q. Is it more or less than they claim in their statement?

A. It is about \$15,000 more.

Q. Than they claim in their statement?

A. That is correct.

Q. You have charged off \$22,000 in 1933 that was not charged off until 1934?

A. Yes.

page 321 } Q. Now, Mr. Jordan, on a cash basis, which is Exhibit D, the last exhibit of the report, what was the gross profit of the City of Norfolk for the year 1927?

A. The gross profit was \$615,935.

Q. The gross profit?

A. That is correct. That is exclusive of interest.

Q. What was the net profit for that year?

A. \$161,000.

Q. That is exclusive of fire service?

A. That is correct.

Q. What was the gross profit for 1928, exclusive of fire service?

The Court: Here are the figures right here before you. Is there any necessity for going over and having him to reiterate these figures? If you want to ask any particular question about them that does not appear on the statement, bring it out, but why go over this and duplicate it two or three times on the record? If it is right, if he thinks it is right, that is about all.

Mr. Godwin: I will ask him this question:

By Mr. Godwin:

Q. What was the net profit for the seven year period on a cash basis, exclusive of fire service?

A. \$1,120,720.

Q. And on the basis of fire protection what was it?

A. \$1,568,920.

page 322 } Q. Does the Water Department show a substantial profit every year of its operation from 1929 to 1933?

Mr. Sebrell: He can only ask what his figures show.

The Court: I suppose folks would have a different opinion about it. It is a matter of opinion. I do not see how it can help very much, but I do not object to his saying it.

A. For the seven year period enumerated in this report it would show, in my opinion, a substantial profit. However, there is no item of depreciation taken into account as far as the auditor's report work was concerned, and that would be a matter that I could not express an opinion on for the exact amount of depreciation. But, leaving out that item, it shows a very substantial profit, in my opinion.

By Mr. Godwin:

Q. Exclusive of the interest charges, the records show that the Water Department has made over six per cent on its investment for each year, does it not?

Mr. Sebrell: That is the very question that he says he is not prepared to answer—the depreciation and ultimate profit.

The Court: Of course, if he knows what the investment is, and he has the amount, it doesn't need a witness to tell whether it is six per cent or any other amount.

page 323 } By Mr. Godwin:

Q. Turn to Exhibit A, Schedule 1, which is the second sheet of the audit the City filed here with its bill of particulars, an operating statement, showing that for the year 1927 only \$53,000 was collected from outside sources; how much revenue was collected that year from outside sources?

A. The statement as submitted states the amount of water rents collected from outside sources.

Q. Was that all of the revenue from outside sources for that year?

A. No. The City received \$12,000 as interest on the Virginia Beach pipe line, \$675.00 from rent of surplus land, and \$5,911 from fishing privileges, making a total not reported in this statement previously submitted, of \$18,586, making a total, including the water rents and other revenue, of \$71,646.

Q. Now, how much in addition was it for the year 1928?

A. \$19,906.

Q. This audit shows exactly what the additions were for each year?

A. It does.

Q. And the total addition for the seven year period amounted to how much?

A. \$130,469.

Q. Those items that you have listed there in addition, all of them were from outside sources, were they not?

A. Yes.

page 324 } Q. Now, Mr. Jordan, turn to Schedule 2 of Exhibit A of your audit, which is the next page; that exhibit shows in detail the number of fire hydrants in the City of Norfolk for each year, does it not?

A. It does.

Q. It shows also the number in Norfolk County and South Norfolk for each year, does it not?

A. Yes.

Q. Now, you have listed "fire hydrants in South Norfolk (rents collected by Water Division), \$50.00 per annum, total installations, fire hydrants"; is that a correct figure there?

A. Yes.

Q. Have they, since their contract, installed additional fire hydrants at a larger price?

A. Yes.

Q. What is the new average cost of fire hydrants in the City of South Norfolk?

A. According to the way I figured it, it amounts to something like \$64, and there are 60 hydrants at \$50 a year, and the other seven hydrants which they had in '31, '32 and '33 are at a higher rate.

Q. Now, on Exhibit C, which is a short page next to the last, that shows the amount of bonds outstanding for each year, does it not?

A. Yes.

Q. And the amount of sinking fund increment?

page 325 } A. That is correct.

Q. The net bonded indebtedness and the book value of the water plant?

A. Yes.

Q. Now, Mr. Jordan, Mr. Taylor stated that they had spent \$500,000 per year in building up their water plant; what does this statement show has been spent in the past seven years for replacements and capital addition?

A. \$454,000, in round numbers.

Q. How is that amount segregated?

A. The book value of the water plant according to June 30, 1926, audit—

Q. How is it arrived at each year? What was the amount of replacement made in 1927 and capital additions?

A. \$127,000.

Q. Now, what was it for the year 1928?

A. \$62,000.

Mr. Sebrell: What is that you are speaking about now?

Mr. Godwin: I will hand you the statement which is tabulated correctly, without having to figure.

Q. (Mr. Godwin) For 1927, what were the exact amounts of all capital outlay, additions and replacements to the system?

A. \$127,660.

Q. Now, for 1928 what were they?

page 326 } A. \$62,113.

Q. For 1928?

A. Yes, sir.

Q. \$62,000?

A. That is right.

Q. How much were they for 1929?

A. \$89,741.

Q. How much were they for 1930?

A. \$88,589.

Q. Now, for 1931 they were what? You have them checked out there correctly, haven't you?

A. Yes.

Q. I am trying to get it for the sake of saving time.

A. \$89,589 in 1930.

By Mr. Sebrell:

Q. Is that last 1930?

A. Yes, sir.

Q. I thought that was \$88,589.

A. That is what it subtracts.

By Mr. Sebrell: I have that figure twice. I want to see which is right.

By Mr. Godwin:

Q. You have it subtracted in your statement. Take the year—

A. (Interposing) I haven't this item subtracted in 1930, but I can subtract it right here. (Witness page 327 } figures.) \$89,589.

Q. For what year?

A. 1930.

Q. Now, for 1931 it was how much?

A. \$51,495.

Q. And for 1932 what was it?

A. \$98,100.

Q. Now, Mr. Jordan, go back to the year 1928, do the totals there make the sum of four hundred and some thousands and dollars which you have given me to figure up?

A. Yes, the total difference.

Q. In the year 1928 you gave me the figure of \$62,000; in this statement, where it was previously stated, I have the figure \$42,113.83.

A. \$62,000 is correct.

Q. In other words, it is the difference between the items of each year?

A. That is correct.

Q. Now, Mr. Jordan, in your examination of the capital account, what portion of those bonds were spent for replacement?

A. I am not in position to state all items that were spent for replacement, but, from an inspection of the audit reports and what would appear to be replacement for this seven year period, it would appear to be \$26,255.

page 328 } Q. In the year 1927 what does the audit show the replacements were?

A. There is only one item in the 1927 audit which would indicate replacement, and that is an item 380-OB-107, replacement of small water line on Bedford Avenue, amounting to \$1,117.16.

Q. In 1928 what did replacements amount to?

A. There are two items, the first is replacement of small water main on Bedford Avenue \$65.39; the next item is hard surfacing road from Moore's Bridge to Lake Smith, \$12.47, making a total of \$77.86. Those items appear on page 34 of the 1928 auditor's report.

Q. In 1929 what was the amount of replacement?

A. There are two items appearing on page 33 of the 1929 auditor's report. The first is replacement of six inch water pipe along Claiborne Avenue, amounting to \$1,273.43, and another item replacing three inch water main on Chicazola Street, amounting to \$2,623.58, making a total in 1929 of \$3,897.10.

Q. Now, for 1930, what did the replacements amount to? All of these replacements are out of the capital fund?

A. That is right.

Q. All right.

A. Page 54 of the 1930 audit report shows two items of replacement which were capitalized. The first is a machine for Moore's Bridge Pumping Station, a replacement, \$2,080; the next is changing water connection, Chapel Street, \$2,830.52, making a total of \$4,912.52.

Q. Now, in 1931?

A. Page 74 of the 1931 audit report shows two items: First, changing water connections on Chapel Street \$82.86, and the next is water mains to Welfare Center, \$2,221.60, making a total of \$2,304.46.

Q. 1932?

A. None in 1932.

Q. The other items are items that were spent out of the capital fund for additional pipe and equipment, are they not?

A. Of course, I am not in position to state every replacement, what it was used for. These answers are based on what appear to be replacements from the wording of the Auditor's report.

Q. In the wording of the Auditor's report, the great majority of these items are additions, are they not?

A. Yes.

Q. And for extensions of lines in the territory?

A. That is correct.

Q. Now, Mr. Jordan, it has been testified here that the book value of the water plant for 1933, as shown on Exhibit C of your audit, was \$11,900,634.68?

A. That is correct.

Q. Are there any book accounts in the Department showing the values of the separate properties of the Water Division?

page 330 } A. There are not.

Q. Are the books so set up that the values of the several lakes can be shown?

A. They are not.

Q. Are they set up so that the values of the several buildings and several pumping stations and the costs of the several classes of water mains and the cost of fire meters and fire hydrants can be ascertained?

A. No.

Q. Are they so set up as to show the individual cost of the several properties purchased from Norfolk County Water Company and those purchased from Portsmouth, Berkley and Suffolk Water Company?

A. They are not.

Q. Is there any way that an auditor can ascertain the present value of the properties of Norfolk Water Department?

A. No, not so far as I can see.

Q. Is there any way you can ascertain the separate values of any of the properties?

A. No.

Q. Does that figure of book value of \$11,900,634.68 represent the true value of Norfolk Water Company's property?

A. I couldn't answer that question.

Q. Have they ever charged off these books anything for property that has become obsolete, worn out, or gone out of existence?

A. Not so far as I have been able to ascertain.
page 331 } Q. Have you tried to check it from the records to find out?

A. I have.

Q. Has there been, so far as you can ascertain from those in charge of the Water Division?

Mr. Sebrell: I don't know that that is correct.

The Court: I suppose some man like Mr. Taylor, who knows about it, can tell. I think it would be proper testimony.

A. I have never been able to ascertain the cost of the individual assets of the Water Division.

By Mr. Godwin:

Q. Now, I am asking you in reference to the property that has become abandoned and obsolete, such properties as Mr. Taylor referred to of the original water company and the properties taken over by the Norfolk Water Department from Norfolk County Water System: Such of those properties as have become obsolete, have they ever been charged off, so far as you know?

A. So far as I know they are still on the City's books. I have never found any entry where they were charged off.

Q. Have you been around to the City Water Department to try to ascertain whether they were charged off?

A. Yes.

page 332 } Q. From the information you could get from the Water Department, have they been charged off?

A. From the information I have been able to obtain during the course of this work, those assets are still on the books of the City.

Q. Have you any idea of the approximate amount of those properties that have never been charged off?

A. I have not.

Q. Is there any method of getting at the actual value of the present water plant other than by a complete re-appraisal of its property?

A. That is the only way I know of.

Q. Is there any method of figuring the depreciation on this plant as a depreciation cost unless that appraisal is made?

A. I do not know of any way.

Mr. Sebrell: I don't know that a bookkeeper can testify to that.

The Court: He says that he doesn't know of any.

By Mr. Godwin.

Q. You don't know of any?

A. I do not know of any that you could estimate depreciation without an appraisal.

Q. Has the Water Department, in all of the years of its activity, ever charged an item on its books for depreciation?

A. No.

page 333 } Q. Have you ever been able to find, in checking back anywhere, where depreciation was claimed in any way as a charge against the revenues of the Department?

A. No. Depreciation has never appeared in the audit reports, so far as I have been able to see.

Q. So far as you know, since this case originated, is the first time depreciation has been claimed on the Water Company property?

A. Depreciation has never appeared on the books of the City in any way.

By the Court:

Q. Have the replacements and betterments and upkeep been charged to capital account, or been paid out of the earnings of the Water Department?

A. Some repairs have been charged into the operation of the Water Department. Those repairs, during the seven year period, amount to approximately \$88,000. The rest of the items and extensions have been capitalized and paid out of bond funds.

By Mr. Godwin:

Q. Now, Mr. Jordan, what are the kinds of replacements that have been charged to the operating fund?

A. If there is a small break and it is repaired, it is charged to expense. If they have to renew the line, it is capitalized.

Q. You mean when they have to renew a long line or a long link?

page 334 } A. Anything of a minor nature is charged to repairs; anything of an important nature, such as replacement, is charged to capital account and paid for out of bond funds.

Q. Then replacements of minor nature, as well as repairs, go to operation; is that right?

A. Yes, if of minor nature.

Q. And substantially a large replacement has gone to capital account?

A. That is right.

Q. Then, replacements are charged to both of them?

Mr. Sebrell: If your Honor please—

The Court: Mr. Taylor testified to practically the same thing, as I recollect. There is no use in going into that.

By Mr. Godwin:

Q. Is there any such item as \$210,000 set up on the books anywhere?

A. No.

The Court: Item of what?

Mr. Godwin: \$210,000 for depreciation.

Mr. Sebrell: I don't recall that. We have never made any such entry on the books, so far as I know.

By Mr. Godwin:

Q. Mr. Jordan, in Mr. Taylor's statement there was \$510,000 spent for water activities since 1922; what does that \$500,000 represent?

page 335 } A. That represents new additions, because in 1922 I think they purchased Norfolk County and Lake Prince pipe line, and that was a capital item.

Q. And that over a period of five years would be \$500,000?

A. Yes, at least that.

Q. I believe you stated \$200,000 was the cost to the Water Department on an average per year since 1872?

Mr. Sebrell: I do not recall that.

Mr. Godwin: On page 22 of his testimony.

Mr. Sebrell: He was talking about the retirement of bonds.

By Mr. Godwin:

Q. \$200,000 was the cost of the Water Department from 1872 to date. That, over a period of 62 years, would amount to about what the book value of the plant amounts to today, isn't it?

A. I have not figured it out, but I will figure it out. \$200,000 for 62 years would be more than the book value of the plant.

Q. Now, Mr. Jordan, you testified that it had never charged any amount for depreciation; is there a reserve account set up for bad debts?

A. Yes, a general reserve account for doubtful debts set up for each year to the corporate fund. There is no reserve set up on the City's books for uncollectible water page 336 } bills.

By Mr. Sebrell:

Q. They are included in the general statement?

A. It is set up in the general reserve set-up through the corporate fund.

By Mr. Godwin:

Q. How much was that general reserve for the whole City of Norfolk for the years in question?

A. The reserves vary. For 1927 the reserve set up was \$50,000.

Q. And how much was the total gross revenue of the City for which that reserve of \$50,000 is set up?

A. Approximately seven and a half million dollars.

Q. The City of Norfolk has never received any revenue or made any charge to itself for its fire protection, has it?

A. No.

Q. It has never assumed or paid any part out of City funds for the construction and maintenance of the plant, has it?

A. I don't get that?

Q. The City of Norfolk, out of its tax fund, has never assumed or paid any portion of the cost of the water plant, or the cost in operating it, has it?

A. I still do not get your point?

Q. For Fire Department purposes?

page 337 } A. No. The Water Division does not receive any revenue from the Fire Department for fire hydrant purposes or for water furnished in connection with fire hydrants.

Q. Does it receive any for street cleaning?

A. It does not.

Q. Or for sewer purposes?

A. No. In the buildings which are metered, the Water Department does receive revenue from meters in public buildings, but not from hydrants or for street cleaning.

Q. In other words, the Department shows all water used by the schools?

A. That is correct.

Q. And all water used in its various offices?

A. That is correct.

Q. But none in these other places?

A. That is correct.

Q. How about the cost of the installation of these hydrants and the maintenance of the hydrants?

A. The cost of the hydrants and installation of the hydrants is paid out of the proceeds of water bonds, but the cost of maintaining those hazards I imagine is paid for out of the Water Department.

By Mr. Sebrell:

Q. You imagine?

A. So far as I know.

Q. Tell what you know.

page 338 } A. There is no account on the books entitled "Maintenance of fire hydrants". They are paid for by the Water Division. They make the repairs.

By Mr. Godwin:

Q. What is the interest on the fire hydrants paid out of?

A. That is paid for out of the Water Department.

Q. In the event of a fire in Norfolk, such as the water front fire in 1931, does the cost of pumping water appear on the City's books?

A. It does not. The cost is absorbed by the Water Division.

Q. All costs pertaining to the Water Plant services to the Fire Department are charged to the Water Division?

A. The Water Division expenses are borne by the Water Division, but the Water Division does not make any charge to the City for its fire protection services.

Q. Mr. Jordan, have you, or not, compiled the number of feet of pipe between Lake Prince and Norfolk?

Mr. Sebrell: Is that a compilation of what appears on the books?

Mr. Godwin: I think so.

A. Just the memorandum I have here.

By Mr. Sebrell:

Q. Is that your memorandum?

A. Yes.

page 339 } Q. It is a memorandum of what?

A. It was given to me from the records of the Water Division by Mr. Bliven, in response to a request for this information.

By Mr. Godwin:

Q. What is the total number of feet?

A. 97,284 feet.

Q. Approximately how many miles?

A. Approximately eighteen and a half miles.

Q. I hand you the annual report showing the regular and special operation of the Bureau of Water, Norfolk, Virginia, year ending December 31, 1932, and ask you to tell the Court how many feet of pipe there are in the entire water system of Norfolk?

Mr. Sebrell: If your Honor please, that was introduced in testimony.

Mr. Godwin: That was not.

Mr. Sebrell: What is it you are introducing now? You are introducing the paper, but you are not asking him to testify what he knows, but what the paper shows. I would like to see what the paper shows. It may be entirely all right and it may not be.

Note: The paper was handed to Mr. Sebrell.

Mr. Sebrell: If your Honor please, I have not read it and I do not know what it shows. I do not know how page 340 } material it is to the case, but it appears to be some report with a great many figures that could not necessarily have been within the original knowledge of the person making it; from what source it does not appear, from clerks and bureau heads, maybe other than the assistant to public works, and I do not think that statement is legitimate testimony. The witness who got it could be brought here. Until that is done, I do not think the report is evidence; and I object to it on that ground.

The Court: Where did the report come from?

Mr. Godwin: It is the report of the Water Department, an annual report, for the year ended December 31, and submitted by the Water Department.

The Court: To whom?

Mr. Godwin: To the City Council.

Mr. Sebrell: No, it is not; it was made to Mr. Bliven. We do not know where the information came from.

The Court: I think you will have to verify it better than that, in order to make it admissible.

Mr. Godwin: Is there any question about Mr. Bliven being the Assistant Director of the Water Department?

Mr. Sebrell: Do you want to put me on the stand? There is no question that he is the Assistant Director of page 341 } Public Works. If you want me to stipulate anything, submit the statement.

Mr. Godwin: This statement is taken from and out of the office of the Water Department.

The Court: Put Mr. Bliven on to verify it.

Mr. Godwin: May I ask Mr. Bliven this question—

Mr. Sebrell: Put him on the stand.

The Court: Go on and finish with the witness. He cannot do more than say what is in the book, and if it is there, prove the book.

Mr. Godwin: All right, sir.

Q. (Mr. Godwin) Mr. Jordan, it has been testified here only \$100,000 worth of bonds had been paid off since the beginning of the life of the water plant of Norfolk; will you please state to the Court, as shown by Exhibit C, the amount of bonds that were paid off during the year 1931?

Mr. Sebrell: I submit there is no testimony which justifies that. I do not recall any testimony which tells us \$100,000.

The Court: The statement shows \$673,000.

By Mr. Godwin:

Q. How much is it?

A. \$673,007.38, retired during the year 1931.

Q. And if no items of depreciation had been charged off on the books of the company, is sinking fund contribution analogous to depreciation as a bookkeeping matter? page 342 }

A. Sinking fund contribution is a redemption, a fixed liability; depreciation is an operating item.

Q. The amounts that they have set up above the interest charges are sinking fund contributions, are they not?

A. That is correct.

Q. Now, Mr. Jordan, all of these properties that were abandoned, or had been abandoned or obsolete, or of no further use, should they have been charged off the books of the City as of the time that they became obsolete or abandoned?

A. In my opinion they should be.

Q. Have they any place in the present set-up of the City of Norfolk from a financial standpoint?

A. They are not assets of the Water Division, that is as to being productive, if they have been abandoned.

Q. Have you made any investigation of the method in which these items were charged off—for instance, for Lake Joyce. the original investment?

A. They have never been charged off.

Q. I mean, how much possibly would have been charged off by those things becoming obsolete?

A. I haven't any idea.

Q. Now, Mr. Jordan, if the City of Norfolk is allowed all costs of operating, all costs of maintenance and all costs of replacement, should it in addition be allowed any costs for depreciation?

page 343 } Mr. Sebrell: If your Honor please, I don't know whether it should be considered one way or the other to ask him what should be allowed in depreciation. I do not know what he covers by that. What is profit and what should be allowed is a question for the Court, and I think it was decided to all practical intents and purposes in the Newport News case.

By Mr. Godwin:

Q. Would the allowance of replacement, operations and retirement, in addition to an allowance for depreciation, be a double allowance?

A. If you charge all replacements and repairs to operating expense, then depreciation reserve would be a double charge. You could elect as to which method you wanted to pursue.

Q. In other words, there must one of the two methods selected?

A. That is true.

CROSS EXAMINATION.

By Mr. Sebrell:

Q. Now, Mr. Jordan, I am handing you statement filed with the bill of particulars of the City of Norfolk in this case, and which was introduced in evidence in this case. It is marked Exhibit B, and shows a financial statement of the page 344 } operating expense and cost of Water Department of Norfolk City. I wish you would take that and compare it with your figures in the audit which you have filed today as Exhibit A, and tell me if the two statements do not correspond except in the arrangement? That is to say, that you have taken from the statement filed by the City the amount of the estimated uncollectible bills, and you have used in another part of that paper that which was actually charged off instead; that is the first difference, is it not?

A. Yes.

Q. The second difference is that you have not included in the expense the annuities paid to the sinking fund?

A. That is correct.

Q. And the third, and the only other one, is you have charged for the fire hydrants used by the City in supplying water for fire and things of that sort?

A. Yes.

Q. Other than that, the figures exactly tally?

A. Not exactly. Mr. Breeden and I figured it up, and we found an item of \$19.

The Court: A thing like that is not big enough.

Witness: With that exception and the ones you have stated, they are in substantial agreement.

By Mr. Sebrell:

Q. So far as the estimate for these uncollectible bills is concerned, that is a correct statement of the City's page 345 } books?

A. Yes.

Q. That also agrees with your statement that you have made as to the financial condition of the water plant during those years?

A. Yes.

Q. Now, Mr. Jordan, as I understand, the only difference in the amount of profit and loss that would be in your statement

and that which has been shown by the City would be for the year 1927 the City charged off in loss of collection of bills estimated \$12,841.85, and you did not charge off any estimated uncollectible bills?

A. I did not charge off any reserve, as that reserve does not appear on the City's books.

Q. Nor did you charge off anything for the year 1928?

A. No.

Q. But you did charge off in 1929, instead of the estimated amount that the City had charged, you charged off \$33,724.62?

A. That is correct.

Q. That represented the previous uncollected bills and not necessarily the bills of that year?

A. That included bills for 1927 and 1928 and charged off in 1929.

Q. Whereas the City charged off an estimated amount each year, you waited until they actually charged it off page 346 } the books and charged off the whole thing in a lump sum covering the several years preceding?

A. The City's books do not show a reserve for uncollected bills. They show a general reserve.

Q. I understood you to say, however, that the uncollectible water bills, the reserve for uncollectible water bills, was included in general and not placed in a separate account?

A. That is correct.

Q. The difference in your statement and the City's statement is that you did not charge off each year any particular amount, but you charged off \$33,724.62 in 1929, which was for the bills of 1927 and 1928 that had not been collected?

A. That is right.

Q. If they were charged off in 1929, they would hardly be the bills which were not collectible in 1929, would they?

A. No. I have an analysis showing the exact amount each year.

Q. I want to get this statement so when the Judge sees it he can understand the difference in the set-up. It seems to be the same account but a different set-up.

The Court: I understand.

By Mr. Sebrell:

Q. That same condition appears with regard to the other years and the amount that was estimated to be page 347 } taken off and the amount that was actually taken off?

A. Yes.

Q. You have been making the audits for Norfolk City.

Isn't it necessary, in order to make the statement, by reason of the bond issues, to estimate at the end of each year the amount that would be collected, and set it up in an estimated amount in your statement you make to the bonded attorneys in New York?

A. I could not answer that question as I never made the statement.

Q. That takes the gross revenue. The gross revenue is the same in your statement as in the City's statement except you have taken the actual charge-off and they take the estimated charge-off only?

A. That is right.

Q. In regard to the direct expense, your statement and the City's statement correspond?

A. Yes.

Q. So you get the operating charges and the operating expense—I mean the operating receipts and the operating expenses—just like the City's with the exception in the set-up you have?

A. Yes.

Q. You get the financial expense and put interest on bonded indebtedness, and that is the same as in this statement page 348 } ment?

A. Yes.

Q. You have omitted the amount paid into the sinking fund which shows on the City's statement sinking fund annuity—you omit that entirely?

A. Yes.

Q. You did not take into consideration anything that the City paid into the sinking fund on account of water bonds except the interest?

A. Nothing except the interest.

Q. Nor did you take into consideration in making your statement any question of depreciation?

A. No, sir.

Q. Then in your statement you state that you have an estimated revenue for water furnished Norfolk City for fire hydrants; that nowhere appears on the City's books?

A. No.

Q. There has been no charge made on the City's books for any of these items—fire hydrants and street cleaning purposes?

A. No.

Q. There is nothing in the books which shows it?

A. No.

Q. Nothing will show how much was used?

A. No.

Q. How much water was consumed?
page 349 } A. No.

Q. Is there any way you can tell how much water was consumed?

A. There is no way I can tell.

Q. That does not appear on the City's statement?

A. No.

Q. You have put that in your statement at the request of the Commonwealth's Attorney?

A. I have put it at the bottom of the statement on the basis of what the City charges South Norfolk and Norfolk County.

Q. You were requested to do that?

A. Yes.

Q. Whether that is a charge against the City of Norfolk under the law, you do not know?

A. No.

Q. You made the calculation as an arithmetician, that the amount of hydrants that we have in the City would produce that amount of money?

A. Yes.

Q. If you were to deduct from this statement of yours the amount that you have charged in there for water furnished the City and add to it the amount that the City pays in annuities, the two figures would substantially cor-
page 350 } respond, wouldn't they?

A. Yes.

Q. So that is the only difference between you?

A. Yes.

Q. Now, when you come to Schedule 1, Exhibit A on the second sheet in your statement, you have got first the source of water rent and the over-amount of water to outside consumers. You will notice the total \$53,060.98 for the year 1927 and the other details for the others years. They correspond exactly with the statement filed by the City, do they not?

A. Yes.

Q. You have added to that other revenues from additional sources \$10,000 instead of from the Virginia Beach pipe line. That is the line extending from Norfolk City to the boundary limits of Virginia Beach, and you have put rent from surplus land. For 1927 you have \$675; then you have fishing permits \$5,911. You do not mean that the people in Norfolk do not fish at all?

A. No.

Q. So there is nothing in the books of the City which would show, and no information you have would show, that that item of \$511 came from outside sources, but may have been, so far as you know, fishing permits that were sold to the citizens of Norfolk City?

A. I put it as income from sources without the page 351 } City of Norfolk for the reason that the fishing privileges were for people fishing outside of the City of Norfolk. They did not fish in the City, and that is the reason I treated it as outside revenue.

Q. As a matter of fact, it does not represent the amount of revenue that it got from outside sources. If it was paid by the citizens of Norfolk, it was not from outside sources?

A. No.

Q. You are not prepared to state that the item was paid by outside people?

A. I say it was paid from outside sources.

Q. Whenever they sold water that came into Norfolk City, it came from Nansemond County, and the fishing privilege was necessarily the right to go outside in Nansemond County, if it was Lake Prince that they were fishing. So, you do not know, as a matter of fact, that that \$5,911 came from people outside of the City of Norfolk?

A. As I just stated, I couldn't say who paid this money. I say that the money was earned outside of the City of Norfolk.

Q. For fishing in the lakes?

A. Yes.

Q. And it may be, so far as that is concerned, that all of it or a part of it was paid by the inhabitants of Norfolk City, so far as the books show?

A. I do not know who paid the money.

Q. I am satisfied the Court will take judicial page 352 } notice that some people outside of the City do fish in it sometimes. The books do not show that that is outside of the City of Norfolk?

A. No.

Q. And you have no information yourself that it was collected from people outside of the City of Norfolk?

A. No, I have no information who paid it.

Q. Every one of those items except the fishing permits and the water rents appear in that statement filed with the Court as the amount from outside sources?

A. All except those, the total of \$53,060.58, appear in your statement as revenue from outside sources.

Q. Revenue from water outside sources?

A. That is correct. The \$12,000 from interest on the Virginia Beach line shows from local sources.

Q. You just put it on a different basis in your report from what it is in the City's report?

A. Yes.

Q. But they all appear in the same amounts?

A. That is correct.

Q. Now, I notice in Exhibit B statement of revenues derived from Federal reservations and public carriers. I am taking only two, because the Court has expressed its opinion as to the materiality of the testimony. Every one of those takers of water is in the corporate limits of Norpage 353 } folk City?

A. Yes.

Q. Now, Mr. Jordan, in Exhibit C, with regard to the book value of the plant, that is what is sometimes called the historical value, is it not?

A. I couldn't say whether it is historical, or not.

Q. What I call historical value is what it had cost to build it up to the present time in capital outlay.

A. This represents accumulated capital outlay up to the present time.

Q. That is the amount that the City of Norfolk has spent in a capital way in acquiring this plant?

A. Yes.

Q. That is the amount of money that Norfolk City has invested in this plant from a capital standpoint?

A. I couldn't say whether it has that much invested, or not, but I say that is the value as shown by the City's books.

Q. Hasn't that value been gotten by appropriations and bonds?

A. It is capital outlay.

Q. If it is capital outlay, it is what the City has actually put out. The City has actually put out that much in capital for its plant?

A. That is right.

Q. Now, you referred just now, Mr. Jordan, that if there was a minor repair that that was charged to operpage 354 } ating expense, whereas if there was any important damage done so that they had to have replacement, that that was put to the capital account; is that correct?

A. Yes.

Q. The repairs would be something which kept it in temporary condition; is that right?

A. It may be temporary and it may be permanent. It depends on how long the repairs would last.

Q. Where it is of serious moment it goes into the capital account?

A. Yes; if the line has to be replaced, the whole line, it is capital.

Q. In the City's books and in the accounts stated here, there has been no charge made for any depreciation at all?

A. No.

Q. The general depreciation of the whole system, the obsolescence of the system, and none of those things have had one cent of charge made against them, have they?

A. No, sir.

Q. I mean so far as our operating expenses are concerned, either in the way of replacement or depreciation?

A. Since January 1, 1927, the repairs amounted to approximately \$88,000, which is charged to expense, and all other items have been capitalized.

page 355 } Q. \$88,000 since when?

A. January 1, 1927. That is up to December 31, 1933.

Q. That is seven years?

A. Yes.

Q. The difference between the city's figures, as submitted, and those in your statement, where the City estimated the amount of their bills and you charged off what was actually charged off, I understood you to say that *that* was actually charged off and lost by the City was more than they estimated that they would lose?

A. That is correct.

Q. So that would really reduce rather than increase the amount of gross receipts?

A. Bad accounts had nothing to do with gross receipts. If you take a cash basis, you take the cash actual basis.

Q. I am talking about the statement that we have made, according to your statement they did not charge off as much as they ought to have charged off?

A. The actual losses were more than you show on your statement. The only difference was in the years in which they were charged off.

Q. Now, you spoke to the Commonwealth's Attorney about replacement in the various years, and I understood you to say that those replacements were from capitalization?

A. Yes.

Q. Neither one of them is incorporated in the
page 356 } account in operating expenses?

A. No, sir.

RE-DIRECT EXAMINATION.

By Mr. Godwin:

Q. Mr. Jordan, Mr. Sebrell has examined you in reference to the statements by way of accrual and says that your figures conform to theirs. On the actual cash value basis, they are materially different, are they not?

A. You mean on Exhibit D, the cash receipts?

Q. Yes.

A. Yes, they are different. For the seven year period, on a cash basis, there are only a few dollars difference between the accrual and the cash bases.

By Mr. Sebrell:

Q. What is the difference in the total between the cash and the accrual bases during that time?

A. I will have to do some subtracting.

By Mr. Godwin:

Q. It is the difference between \$1,181,634.92 and \$1,120,720.39, is it not?

A. That is correct for the seven year period. It would be less than that if you take the six year period.

Q. Now, Mr. Jordan, do you charge off accounts in a cash basis?

page 357 } A. No.

Q. In addition to what this statement on a cash basis shows at the end of either one of these periods, they had an asset of a large number of delinquent dealers, did they not?

A. That is correct.

Q. Or accounts receivable?

A. That is correct.

Q. Now, Mr. Sebrell asked you about the questions of fire service to the City; he asked you was it done because I suggested that it be done; have you always, in your dealing with the City, maintained that the City should charge itself for fire protection?

A. In my opinion I think that every department should stand on its own basis.

Q. Do you know whether or not it is the general custom and practice of all the water works companies in this area to charge the cities for fire protection?

A. Every city I have ever audited makes that charge except Norfolk.

Q. In addition to those figures which you have shown here, Mr. Jordan, the reports and the audits which you made and testified to as correct show there is a \$22,000 fund set up for breaks in Lake Prince pipe line?

A. It does.

Q. Which was received from an outside source?

page 358 } A. All of it has not been received yet. It is in the form of a credit memorandum which you can trade out.

Q. Now, if you take, Mr. Jordan, all of the replacements and all of the additions paid for out of the capital fund of this water company and give the City credit for every one of them, have they still made a profit?

A. Exclusive of any sinking fund annuity and exclusive of any depreciation which they might have been entitled to, on a cash receipt basis it shows the earnings have been \$1,120,720. The actual capital outlay during the same period has amounted to \$454,000. That would leave an indicated surplus if all the replacements had been charged to expense—

Q. (Interposing) Expense and capital additions?

A. (Continuing) —had been charged to around \$700,000 stated in account which they had on hand which might prove to be collectible and also in cash in the Water Department.

Q. Now, do these—

The Court: (Interposing) Don't go over this thing again. I do not want it but once.

By Mr. Godwin:

Q. Do the additions that were paid for out of the capital fund indicate on the books of the company that they were protective or additional revenue?

A. The revenue every year has increased.

Q. Did you compile this statement?

A. I can express my opinion on this statement.
page 359 } At December 31, 1926, the book value of the water plant, according to the 1926 official audit of the City, was \$11,418,120. The book value of the water plant at December 31, 1927, was \$11,545,781, showing that additions and betterments and replacements during that year of 1927 were \$120,660.

Mr. Sebrell: You have got all of that down here.

The Court: I am reading right from the figures.

Witness: The reason I am bringing these figures forward, you asked whether they were protective or additional revenue.

By Mr. Godwin: That is right.

A. In order to answer that question, I had to bring up the figures. The income from the Water Division in 1926 was \$844,911. The income for the Water Division in 1927 was \$854,371.26. The increased revenue for 1927 over 1926 was \$9,459.

Q. And does that pertain to other years you have checked?

A. I have not checked all years after that.

Q. Have you checked any other years?

A. The income of the Water Division in 1928, in round numbers, was \$6,000 more than in 1927. The gross income of the Water Division in 1929 was \$18,600 more than in 1928.

Q. As they have made capital provision from year to year, the income has increased also?

A. That is correct.

Q. Now, Mr. Jórdan, Exhibit C: Mr. Sebrell page 360 } asked you about the historic value of the plant, and he asked you didn't the eleven million dollars represent the amount of capital expenditure to build the plant. Isn't that a difference between the total bonds outstanding and the value of that plant?

A. That are deducted each year?

Q. Yes.

A. The plant itself and the bonds outstanding.

Q. If the plant is in excess of the bonds outstanding, then the bonds—

A. (Interposing) Some bonds have been retired.

Q. How many?

A. I have not deducted it.

Q. Mr. Taylor says only \$100,000, which was probably an error of \$660,000, had been retired. At the highest peak of bonds outstanding, it was \$9,647,821, wasn't it?

A. That is the highest amount of bonds that have been outstanding during this period I have examined.

Q. And if only \$673,000 bonds have been retired in the history of the plant, they were retired in 1931, were they?

A. The only bonds I know of which have been retired is the \$673,000 retirement in 1931.

Q. Therefore, there is a difference between the bond fund and the amount spent out of the bond fund of something like \$2,000,000 in value on that plant, isn't there?

page 361 } A. According to the period under review. I can't state what happened before that time.

RE-CROSS EXAMINATION.

By Mr. Sebrell:

Q. You do not know what bonds were retired prior to 1927, do you?

A. No.

Q. On Exhibit B, where you have the cash basis, when you put down the water rent received and cash received, that is the amount of actual cash taken in that year, whether it represents the bills for that year or preceding bills?

A. Yes.

Q. If the last quarter of the year was not payable in December but was payable in January and was collected in February for the 1933 tax, it should be charged as a cash receipt for 1934, shouldn't it?

A. It is charged as a cash receipt in the year in which the cash was received.

Q. And that is charged irrespective of the year the water was consumed?

A. Yes.

By Mr. Godwin:

Q. It is credited in the year in which it is collected and in no other year?
page 362 } A. Yes.

WALTER H. TAYLOR,
recalled, testified as follows:

Examined by Mr. Godwin:

Q. Mr. Taylor, is there any way to ascertain the present value of the various classes of property of the Norfolk Water Plant?

A. No.

Q. The book value is shown at approximately \$11,900,000, at the end of the year 1932; what portion of that value is shown in the various classes of property owned by the City?

A. What percentage of that \$11,900,000 is shown by property today in possession of the City?

Q. Yes.

A. I couldn't answer that.

Q. Practically all of the \$500,000, the original bond issue for the beginning of the Norfolk Water Department, I understood you to say, has been wiped out, hasn't it?

A. That is right.

Q. Then lots of the properties, such as Lake Joyce and all of those lakes, are obsolete, are they not?

A. That is right.

Q. I understood you to say that a large portion of the pipe lines had been replaced by bigger lines; is that right?

A. I made the statement with reference to the original installation out of the original bond issue of
page 363 } \$500,000, that the thirteen miles of pipe laid at that time in the distribution system of the City of Norfolk had been very largely replaced by larger pipe lines.

Q. They have been replaced twice?

A. I didn't say that.

Q. I understood you to say it was once replaced and then again replaced with larger pipe.

A. I never made such a statement.

Q. Approximately how much stuff has become obsolete and of no further use, or has been replaced, that is represented in this eleven million dollars?

A. Nothing but an absolute complete up-to-date valuation of present worth would show that, and that has not been done.

Q. Then, there is no way to ascertain the present value of the plant?

A. There is no way to state with precision the present day value of the properties of the Norfolk Water Plant without an accurate valuation.

Q. And there is no way to arrive at the values of the various classes of property which go to make up the whole system, is there?

A. I will get you to repeat that question?

Q. There is no way to arrive at the value of the various classes or types of property that go to make up the entire system, is there?

page 364 } A. We have a fairly accurate statement to that effect.

Q. Is that statement on file in your office?

A. In our office, yes.

Q. For instance, the value of real estate or lakes, the value of buildings, the value of distribution systems and the value of machinery, have you got them segregated so you could testify to them?

A. I have the cost of every one of them but not necessarily present day value.

Q. For instance, what proportion does your pipe line bear to the reservoir?

A. I can only answer that in general terms. We estimate that for every dollar that we have invested in distribution system, in the City mains, we have two dollars otherwise invested in supply mains, reservoir, pumps, filtration plant and so forth.

Mr. Sebrell: If your Honor please, I have some regard for time. When we adjourn this hearing, when we were here on the 29th day of October, I believe it was, I thought that the examination today would be restricted to an examination of the City's books, and that was a matter of record. We did not come prepared for any rebuttal testimony today.

Mr. Godwin: The City's books set up a value of eleven million dollars—

The Court: (Interposing) Just ask the question, but for goodness sake don't prolong it and draw it out on matters already in the record.

By Mr. Godwin:

Q. Mr. Taylor, there is for every dollar in distribution main approximately two dollars in reservoirs, pipe lines, and pumps; is that right?

A. Supply lines, if you mean by pipe lines large mains.

Q. What ratio does reservoir bear to pipe lines?

A. It is not far from an equal division—a little larger percentage of the main supply lines.

Q. It is about a 1, 1, 1 ratio?

A. Not far from it.

Q. In reference to the cost of fire protection, Mr. Maury, who is a consulting engineer, was employed by the City of Norfolk, after he had helped develop the Lake Prince property, to come down and study your rates, wasn't he?

A. Yes.

Q. He came down and at the expense of the City studied the rates of the entire system, did he not?

A. Yes.

Q. And he made a report to your Department on the rates, did he not?

A. Yes.

Q. And, in that report, he recommended that the City charge to itself twenty-five per cent of all interest that they pay on bonded indebtedness and five per cent of its operating cost as a fair charge for the service it receives?

Mr. Sebrell: I object, as it has no bearing in this case. I do not know what Col. Maury proposed or advised, but it is not material in this case.

Mr. Godwin: Do you want a copy of the record?

Mr. Sebrell: I want legal evidence and nothing else.

Mr. Godwin: We expect to show that the City of Norfolk has not charged itself for fire protection that it should have charged for. We expect to prove to this Court that it is the practice and usage and it is a proper charge, and the Court of Appeals has so recognized it in its decision, that the City should charge itself for the water it uses and for fire protection. We expect to show your Honor that Mr. Maury, who is a consulting engineer, and who helped to develop the Lake Prince project, was employed as a representative of

the City of Norfolk in a consulting capacity to come to Norfolk and, at the expense of the City of Norfolk, make a complete survey of all of the rates existing in Norfolk; that he came to Norfolk and that he made that survey as their engineer and as their employee, and he reported to the Norfolk authorities that they should charge themselves for the water and fire protection that they used, and he figured
page 367 } out under one of the present existing methods of figuring out those costs—

Mr. Sebrell: (Interposing) I don't think you have a right to come and say "I will introduce and try to prove what is in a report" the introduction of which is objected to on the ground that you cannot introduce the report.

Mr. Godwin: How can the Court know what I want to introduce if I do not tell the Court? He recommended that the City of Norfolk should charge itself twenty-five per cent of the cost or of the amount of money that it was necessary to put into the sinking fund and to pay its interest charges, and, in addition it should charge itself five per cent of the actual operating cost, which made a total in 1923 of between \$160,000 and \$180,000 as its proper share. That is what I expect to show, and I expect to show to your Honor, in addition to that, there is no question about Mr. Maury coming here, and that he filed a report, and that a copy of that report has been given to us by the Water Department of the City of Norfolk.

Mr. Sebrell: I just want to say that we object to the report itself. I do not care what Mr. Maury's figures were or what his suggestions were, it cannot be material to this case and it cannot be introduced without having Col. Maury
page 368 } put on the witness stand to find out his reasons. The Court: I think you can ask Mr. Taylor anything that is in the report, or his judgment, but you cannot prove what Mr. Maury thinks about it. He is not speaking under oath, and, so far as I know, it may be talking about something that he could explain away. I do not know what he could do if he was here to be examined. His report is not evidence in this case.

By Mr. Godwin:

Q. Now, Mr. Taylor, were not you advised by your consulting engineer that in a city the size of Norfolk it is estimated that about twenty-five per cent of the capital charges, which are in the form of interest and depreciation, would be fairly chargeable against fire service, the remaining seventy-five per cent of the capital charges being assigned to domestic service?

Mr. Sebrell: I object as immaterial.

The Court: I will let him answer it to get it in the record.

Mr. Sebrell: I save the point.

A. Col. Maury, in his studies of the local situation in Norfolk as to fire service rendered by the Water Department, in keeping with the demand of the fire underwriters, stated to me that he thought that his estimate of the expense of that service rendered by the Water Department an-
page 369 } nually amounted to about \$144,000. That was
arrived at by Col. Maury in his estimate of the
cost of the requirements of the Water Department to meet
the requirements of the said underwriters over and above
what would be the requirements if we were not rendering
fire service.

CROSS EXAMINATION.

By Mr. Sebrell:

Q. Is it not a fact that when that question was considered with regard to making a statement to the bonded attorneys as to whether or not the water works were self-sustaining that Mr. R. B. Tunstall, a prominent attorney of Norfolk, advised the Council that they did not have the right to make such charge?

A. He did.

Mr. Godwin: If it please the Court, I do not think that is admissible.

Mr. Sebrell: If Mr. Maury advised it, I do not see why Mr. Tunstall should not be quoted.

Mr. Godwin: All right, put it in.

Mr. Sebrell: Stand aside.

By Mr. Godwin:

Q. I just want to ask you this one question: Mr. Maury is one of the leading water engineers of the country, isn't he?

A. He is dead now.

page 370 } Q. I mean he was?

A. Yes.

Q. He was the man who did the engineering for the Lake Prince piping?

A. He was a consultant at that time.

Q. And that report that he made was after an exhaustive survey of the rates in Norfolk, wasn't it?

A. Yes, sir.

Q. Do you know the approximate value of the property owned by the City of Norfolk in Nansemond County?

A. No.

At 12:20 the Court took a recess until two o'clock for lunch.

page 371 } AFTERNOON SESSION.

Suffolk, Virginia, December 3, 1934.

The Court met at the expiration of the recess.

Present: Same parties as heretofore noted.

WALTER H. TAYLOR,
recalled for further examination, testified as follows:

Examined by Mr. Godwin:

Q. Mr. Taylor, I hand you here the annual report showing the regular and special operations of the Bureau of Water, Norfolk, Virginia, year ending December 31, 1932. Please state what are the total number of feet of pipe in your system?

Mr. Sebrell: If your Honor please, that is the same report that your Honor ruled out just now, and I do not suppose it has become any more material or better evidence than before. He is not asking Mr. Taylor to testify how many feet he has, but to read the report.

The Court: I understood him to hand the witness the report and state how many feet he has. If he knows he can tell.

A. We have in the distribution system of Norfolk a little more than 400 miles of pipe, including the supply mains.

By Mr. Godwin:

Q. Do you know much that is in feet, Mr. Taylor?

A. Yes; multiply 400 by 5,280.

page 372 } Q. I want to ask you how many feet of that
are in wood pipe?

A. In wood pipe—

Mr. Sebrell: Mr. Taylor, the Judge has ruled that that paper is not evidence. If you can testify, you can do it.

Witness: I can testify of my own knowledge about ten miles of twenty-four inch wood pipe from North Landing, and

about ten miles of thirty and thirty-six inch wood pipe in the Lake Prince supply line.

CROSS EXAMINATION.

By Mr. Sebrell:

Q. Mr. Taylor, while you are on the stand I am going to ask you this about which Mr. Godwin examined you this morning: Can you give the Court an idea of how many million gallons of water are used through these fire hydrants a year?

A. The report of the Chief of Fire Department for a year, a little above the average—

Q. (Interposing) If you can tell me yourself, if you know of your own knowledge, can you estimate to the Court?

A. The engine will use 500 hours for one stream, which is certainly not in excess of three hundred gallons
page 373 } a minute, and that would calculate a usage by the
Fire Department of nine million gallons of water
per annum.

Q. The rate that you charge wholesale, when you just deliver the water wholesale, is ten cents a thousand gallons?

A. It would figure \$1,126.00 a year. That is at the rate that we sell water.

Q. I want to get all the facts before the Court. How much water would be used for street cleaning purposes?

A. We use less than \$2,000 worth a year.

Q. And that is at the same rate you charge?

A. Yes.

Q. How about for sewer purposes?

A. \$1,000 to \$1,500.

Q. A year?

A. A year.

RE-DIRECT EXAMINATION.

By Mr. Godwin:

Q. Did I understand you to say when you have a fire your engines only pump 300 gallons of water a minute?

A. I didn't say that.

Q. I understood you to say so.

A. I stated to you during the year the fire engines at 500 hours' pumping—the equivalent of 500 hours' pumping for one stream,—will measure the discharge of not to exceed 300 gallons per minute. There might have been a fire in which
page 374 } there were nine or ten or eleven streams, but the
aggregate of pumping hours was 500.

Q. What year was that?

A. 1932, I think.

Q. How about the year you had the big fire on Water Street? You used more than that in one hour, didn't you?

A. That is the biggest fire we have had since I have been connected with the City of Norfolk, and on that occasion our pumpage, as indicated by the meters of the pumping station, June 7th and 8th, 1931, and proved each twenty-four hours, was, 2,397,000 in excess of the normal pumpage.

Q. That does not take into consideration anything but raw water alone?

A. Anything but what?

Q. Water alone?

A. That is all I stated.

Q. Isn't there a material difference between the cost of a plant designed to furnish fire protection and domestic consumption over a plant simply designed for domestic purposes?

A. I so stated that this morning.

RE-CROSS EXAMINATION.

By Mr. Sebrell:

Q. Is the water used for fire purposes at a different place from that you get it for consumption?

A. No, but the design of the plant; for example, page 375. } you have to have a reserve at all times for fire fighting purposes, which reflects back through every item almost that goes to make up the plant, and that reserve is no small amount.

Q. What I am trying to get at is when you fight fire do you use the same kind of water you use for drinking purposes?

A. We use the same.

MALCOLM PIRNIE,

a witness on behalf of the County of Nansemond, being duly sworn, testified as follows:

Examined by Mr. Godwin:

Q. Mr. Pirnie, what is your name, address and occupation?

A. My name is Malcolm Pirnie; I am a consulting engineer with offices at 25 West 23rd Street, New York City.

Q. Now, in what colleges did you receive your education?

A. I was graduated from Harvard College in 1910 with the degree of Bachelor of Science and from the Graduate School of Applied Science of Harvard University in 1911 with the degree of Master in Civil Engineering.

Q. What has been your experience in engineering since you graduated from Harvard?

A. I entered immediately upon graduation as an assistant engineer with Hazen & Whipple, consulting engineers in New York. Later the name of this firm was Hazen, Everett & Pirnie. I became a partner in that firm in December, 1916, and continued in that capacity until June, 1929, at which time I established an office of my own for the continuation of practice of consulting engineering.

Q. Now, Mr. Pirnie, has your practice been largely confined to water works practices, rates, valuations, purchases and sales of water property?

A. It has been along the lines of engineering of water properties in all their phases, and also I have had considerable to do with sewerage and sewage disposal and the making of appraisals and valuations and the supervision of operations of both municipal and privately owned water works properties.

Q. Did they consist of a large number of plants from Boston to Florida?

A. If you are going north, we can go into Canada to Ottawa, the capital of Canada, to Florida on the east coast of the country.

Q. What has been your experience with water works in Virginia?

A. One of my earliest assignments Mr. Taylor knows about, because I came here as an assistant engineer for Mr. Allen Hazen and made a study in Mr. Taylor's office of the run-off of the Lake System in Norfolk County, and following that study was located out at Exit, Virginia, in page 377 } the early preliminary surveys of the development now known as Lake Prince, and extended those surveys into the Burnt Mills area and carried them clear out to Smithfield for drainage area determination and storage capacity. I came here again to make, in conjunction with an engineer from Mr. Taylor's department and one from the Portsmouth, Suffolk and Berkley Water Company, of the carrying capacity of the mains in Berkley at the time that Norfolk was negotiating the purchase of the Berkley mains. I have on several occasions visited parts of this plant in recent years. I made a survey and report to the City of Charlottesville, Virginia, on the problem of increasing its water supply. I designed and supervised the construction of a revised filtration plant for Danville, Virginia, and designed a large water filtration plant for one of the mills of the West Virginia Pulp & Fibre Company, at Covington, Virginia.

Q. Now, has your firm, from time to time, been used as consulting engineers for the water works system of the City of Norfolk?

A. Yes; it was in that capacity I was down here before I was a member of the firm of Hazen and Whipple.

Mr. Sebrell: He refers to one particular time, and you say from time to time.

By Mr. Godwin:

Q. Mr. Hazen's firm, of which you are a partner, has been used from time to time as consulting engineer of page 378 } Norfolk?

A. I think only in this survey which led to the recommendation of the purchase of the Lake Prince supply.

Q. Now, are you at present connected in any way with the Government activities as they apply to water works?

A. Yes.

Q. What are they?

A. I am and have been since the beginning of the operations a member of the Technical Board of Review of the Public Works Administration in Washington. I was for six months Deputy Administrator in the Recovery Administration, in charge of the Code for the construction industry and Codes for several of the industries creating materials which go into construction, which also has to do with water works material and construction activities.

Q. Now, what has been your office with the American Water Works Association?

A. From 1921 until the time of bringing out manual of water works practice of the American Water Works Association, I acted as secretary to the Council on Standardization which prepared the material for that manual. Since then I have been chairman of the Water Works Practice Committee of the American Water Works Association which is charged with the duty of keeping information on water works practice up to date. I was President of the American page 379 } Water Works Association in 1932-33.

Q. Now, Mr. Pirnie, what is the practice, or is it the practice of water companies to charge cities for fire purposes?

A. It is the universal practice.

Q. Is a charge to a city for fire protection, as well as street cleaning and sewage, a legitimate and proper charge?

Mr. Sebrell: I object to that question.

By Mr. Godwin:

Q. Is it a proper charge?

Mr. Sebrell: I object.

The Court: I will let the witness answer it.

Mr. Sebrell: I save the point.

A. Before answering any more questions, I would like to finish qualifying myself, if I may. I would like to put in the record the rest of my qualification.

By the Court: Go ahead and put it in.

By Mr. Godwin:

Q. All right.

A. In the water works engineering work that I have had to do, I have made investigations of water supply, working in conjunction with Mr. Hazen on the Metropolitan supply for the New Jersey area to the Conservation and Development Commission of the state, on the Metropolitan water supply District of Boston on an additional supply for Boston. I

have handled substantial engineering problems page 380 } for such cities as Providence, Rhode Island and

Jacksonville, Florida, in addition to many of the other cities in those states. I have made a valuation of the Indianapolis Water Company and presented testimony in a rate suit in Indianapolis. During the water I was assistant sanitary engineer with the American Red Cross Commission to Russia, and later assistant engineer of water supply in the Department of Engineer of Construction under the Director General of Transportation A. E. F., leaving the Army with the rank of Captain, and I am a member of the American Society of Engineers; was a director from 1928 to 1930; President of the Metropolitan Section 1932-33; a member of the Institute of Consulting Engineers New England Water Works Association, American Public Health Association, Florida Engineering Society, Society of American Military Engineers, American Geo-physical Union of the American Research Council and official arbitrator of the American Arbitration Association. I have recently acted as umpire, chosen by the representatives of the City and the water company, in making a valuation of their sale of the water company property to the City of Lexington, Kentucky; I am Mayor of the village of Scarsdale, New York.

Q. I believe you are one of the Trustees of Vassar College, are you not?

A. Yes.

Q. Mr. Pirnie, I ask you whether or not a charge to a city for fire protection is a proper and necessary charge?
page 381 }

A. I so consider it.

Q. Is it generally recommended and advised by the consulting engineers of your profession?

A. I recommend and advise it myself and know that a number of my contemporaries do also.

Q. Is it so recommended and advised by the American Water Works Association?

Mr. Sebrell: That is not testimony.

The Court: I do not think to ask what some society does is evidence.

By Mr. Godwin:

Q. Now, Mr. Pirnie, what are the methods presently employed in determining and charging to the City for this service?

Mr. Sebrell: If your Honor please, I do not know how long this will continue, and I have been waiting for the general question. Of course, I could not object to the qualification of this witness. When we had this trial on the 29th day of October we went into every question that is being investigated now, and the testimony was heard on behalf of the City and heard on behalf of the County, and at the conclusion of the testimony your Honor continued this case for the purpose and the sole purpose of giving the attorney for the Commonwealth or for the County an opportunity to
page 382 } examine the City's books to determine whether or not the financial report that we had was a correct report from the books of Norfolk City, and your Honor granted that request and continued the case for that purpose, and it was then stated and understood that the sole question of inquiry—and I have a statement at the conclusion (referring to stenographic report near the end of proceedings on October 30)—the proceedings were these:

“The Court: I can hear you gentlemen on the 26th of November.

Mr. Sebrell: I think we had better have it understood what we are to do when we come back. I want to know when we come back if it is as to what they find in the audit.

The Court: Unless you put on something else. I understand that they will deal with the audit as they find it down there. We are not going over this general matter any more.”

Upon that statement and that understanding we dismissed all our witnesses, and we came back today prepared to go into the question of the audit of the books. I submit to the Court that testimony outside of that ought not to be introduced at this time, thereby necessitating a further adjournment to have a chance to rebut the testimony on behalf of the County. The case was gone into and concluded on that day with the distinct objection on our part to permitting the Commonwealth's Attorney to go over the books to see whether the figures we brought here were correct.

The Court: That was undoubtedly the general understanding at that time. Of course, I can readily understand that there has arisen in the case the question of depreciation, which is almost essential that I should know something about if I have to dispose of questions which are involved in this case, and I thought that probably this witness was put on to deal with that subject. If we are going into the general matter that has been gone over before, I think the position is well taken.

Mr. Godwin: I did not intend to do that. Here is what has happened: We have been in the City of Norfolk and investigated its books, and we find, in investigating the books, that there are certain matters which cannot be dealt with from those books for a full understanding of the Norfolk water works situation. For instance, the question of the values of their properties which they have carried on their books, set up a value now of approximately twelve million. There was no way that we could get any record in the office, and that is an essential thing that the Court would want to know. In addition to that, they filed a statement, without claiming any depreciation at all; they set it up in their pleadings as a sinking fund. Mr. Taylor, in his testimony, came in and claimed that there was an item of charges on his books and the value of the plant of \$210,000 a year. I am frank to say that we cannot find that on the books anywhere.

Mr. Sebrell: And you cannot find it in Mr. Taylor's testimony.

Mr. Godwin: I will read it from page twenty-four:

"Q. Mr. Taylor, when we adjourned on yesterday we were talking about the depreciation, and you had made the statement that from your knowledge of the condition of the plant a proper amount of depreciation for the property annually would be about \$210,000. You were referring to the properties as they exist at the time?

A. Yes."

On page twenty-two of the record:

"Q. As I understand, Mr. Taylor, from your knowledge of the deterioration of water properties, particularly our properties, you figure that \$210,000 annually is the proper amount to be charged off for depreciation?

A. I do."

In addition to that, we find in the audit of the books that they have made certain charges to outside localities for fire service, that they are using water for themselves without making any charge whatever for it. There is no method—

The Court: (Interposing) You have been over that.

Mr. Godwin: We were trying to ascertain from page 385 } their records what would be a fair charge for that service. Now, we have ascertained it from their records. We have ascertained it in an engineering way from the size of their pipes and under a correct method which has been generally proved, and that is the only way that it can be ascertained. Insofar as the propriety of the charge is concerned, our Court of Appeals has said that the charge to the City for the use of water is a proper charge in determining this price.

Mr. Sebrell: Where do you find that?

Mr. Godwin: I will read it to you. It is on page 594 of 159 Virginia, which says this: "The revenue or profit derived is not limited to that derived from the outside use of the water works property or any other particular use, but can only be revenue or profit derived from all sources pertaining to its use, including that derived from the use by the City itself for its own municipal purposes."

Mr. Sebrell: Of course, it means its own municipal purposes, its inhabitants.

Mr. Godwin: They set up in that suit and they charged a fire hydrant rental, and the Court of Appeals included that as a part of the profits of that system, and Mr. Armistead is here who argued that case before the Supreme page 386 } Court.

The Court: I am going to let it come in.

Mr. Sebrell: I save the point.

The Court: I want to get the facts so we will know what we are doing.

By Mr. Godwin:

Q. Now, Mr. Pirnie, what are the correct methods of de-

termining a fair charge to the city for water and for services of fire protection?

A. In cases where a complete analysis of each item of the property is not available, the usual method is to make the charge on a basis commensurate with charges made for that service in cities of like nature. Where, however, you have an appraisal of your water system, it is possible to determine the proportion of each item of property which is actually required for fire protection above the requirements for furnishing water for consumer use, and that method is used based upon appraisal to determine the proportion of the cost of all services rendered by the water system chargeable to fire protection.

Q. Now, in the method employed on the bases of so much of the operating cost and fixed costs, what would be a proper charge under that method?

Mr. Sebrell: I object to the question as the witness cannot give the proper method in Norfolk City.

The Court: His view.

page 387 } A. In the absence of an appraisal of the parts of the property, it has been determined on an average that approximately twenty-five per cent of the gross revenue needed to support the entire property for both water service and fire protection service is in the neighborhood of twenty-five per cent. I had in the records that I have reviewed and studied, while down here this time, a report made by an engineer for whom I had great regard and knew quite well, in which he advised that the annual amount that was proper to charge for fire protection service in Norfolk would be twenty-five per cent of the annual interest on the bonds, plus sinking fund payment and five per cent of the annual operating expenses.

By Mr. Godwin:

Q. That is the Maury report, to which reference was made this morning?

Mr. Sebrell: And which the Judge ruled out.

By Mr. Godwin:

Q. Go ahead.

A. Another method that I always use in making a first study of a water system is to take the most recent Underwriters' report, which always gives as of a certain date the mileage of pipe of different sizes in the distribution system and the

number of hydrants employed. From the mileage of pipe of the different sizes, we compute the so-called inch-feet units in the system as a whole. That is, a six inch pipe page 388 } would have six inch-feet per foot of length and a twenty-four inch pipe would have twenty-four inch-feet per foot of length. From this tabulation of lengths of mains of different sizes in the Underwriters' reports, it has been possible for me to determine that the inch-feet in the Norfolk distribution system of all pipes six inches and larger in diameter—

Mr. Sebrell: (Interposing) If your Honor please, I want to say in the record that I object to this testimony because the witness is giving an opinion as an expert upon a hypothesis or statement of facts that he assumes to be correct from a report which has not been filed and upon which there is no evidence to support it.

Mr. Godwin: I will correct that now.

Q. (Mr. Godwin) Have you compared that Underwriters' report with the report of the number of feet pipe as compiled by the Water Department of the City of Norfolk, and also heard Mr. Taylor's testimony on the stand as to the number of feet?

A. I have.

Q. Are they substantially correct?

A. They are.

Mr. Sebrell: Your Honor has heard as much as I have and as much as my friend has heard. The report page 389 } on which you undertake to base it has been excluded from the testimony. Mr. Taylor's statement was that he could not testify as to the number of feet, but he has testified as to the number of miles and also the number of feet in the wooden pipe.

By Mr. Godwin:

Q. The Underwriters' report gives the same mileage, doesn't it?

A. Yes.

Q. Does it make any difference which you use?

A. Not after I have checked it against the record of the City of Norfolk. It shows that the Underwriters' report is in agreement with that record.

By Mr. Sebrell:

Q. Are you talking about the report Mr. Godwin just now

referred to as being a report from the Department, or are you talking about Mr. Taylor's testimony?

A. I saw the number of feet of pipe of different sizes in the City of Norfolk reported in a record of the City Department, and made a comparison between that and what the Underwriters carried as the length of pipe of different sizes as of the same date, and found that they were in substantial agreement.

Q. Now, you are basing your opinion upon these two reports—that report and one purported to be a report from the City of Norfolk?

A. I am basing it upon the Underwriters' report for the City of Norfolk, having checked it, because I have done this thing in a great many cases of investigation, and it is my method of doing so.

Q. I understand your method, but I am asking what you are making now is now testimony is based upon the report of the Underwriters and the report which you had this morning in your hand?

A. Yes.

Q. Purported to be a report from the Water Department?

A. That is partly true and the rest is that I have done this in a great many instances where I have made checks of the Underwriters' reports against the actual investigated lengths and sizes of pipes in the communities and found them always to be substantially correct.

Mr. Sebrell: I object to the method on which he makes his report.

The Court: Objection overruled.

Mr. Sebrell: I except on the ground that the reports are not in evidence and that they are not proved to be accurate, and that it is a hypothetical question based on facts which have not been proven.

By Mr. Godwin:

Q. Go ahead.

page 391 } A. In making this computation I find for the distribution system in the City of Norfolk, including some mains which have not been segregated, which do run outside of the City limits, 13,420,600 inch-feet. The hydrants being used by the Fire Department 1,403. The usual charge for fire protection of from one to one and a half cents per inch-foot is made for fire protection purposes, and a charge to cover the cost of the hydrant and hydrant connection, varying between ten and twelve dollars per year is made. Naturally, the connection to the hydrant from the

main through the gate and into the hydrant is 100 per cent investment for fire protection purposes and is used, of course, in addition sometimes for washing down a street or by means of a fire hose for flushing a sewer, but its primary purpose is for fire protection. Therefore, the charge per hydrant is made on the basis of capital requirement and maintenance of that hydrant from \$10 to \$12 per year. Figuring at the one cent rate per inch-foot and ten dollars per hydrant, the total would be \$148,236.00 per year as the mains recorded for December 31, 1932. On the one and a quarter cent rate and \$12 per hydrant per year, it would come to \$184,593.00. I might say that this last rate was put into effect between the Village of Pelham, New York, and the water district after a conference in which I sat with the officials on both sides just about a month ago. I then took twenty-five per cent of the interest and sinking fund payments of each year from 1927 to 1933, inclusive, and five per cent of the

page 392 } operating expense for those years, and added those two and find that on that basis of computation the amount for fire protection would be a maximum, in 1931, of \$174,309.75 to a minimum for that period in 1933 of \$162,544.96. It will seen that those computations on the inch-foot basis and the annual charge per hydrant and the computation based upon twenty-five per cent of the accrual charges, plus five per cent of operating charges, are reasonably in comparable limits, the totals in any case being equal to all above \$148,000 a year.

Q. Now, Mr. Pirnie, with those figures you and Mr. Maury are in accord, are you not?

Mr. Sebrell: If your Honor please, I object to that. I do not like to object but my friend keeps bringing in things that your Honor has ruled out.

Mr. Godwin: All right.

By Mr. Godwin:

Q. Why is it that the City should bear a portion of the cost of the Fire Department? Does it cost any more to build a plant for both fire and domestic purposes than it does simply for domestic purposes alone?

A. It costs substantially more.

Q. In what are those items?

A. The distribution system must be built of substantially greater capacity to furnish fire protection in addition to the maximum day demand. In the case of Norfolk, the requirements of the Underwriters are that the capacity

page 393 } must be in the proportion of 48.7 per cent for fire protection of the total required for maximum day

plus fire protection. That is found by checking from the Underwriters' report what they demand in the way of fire protection service and add to what they record as the maximum day average demand. As you get back from the distribution system to the filtration plant clear well and pumping station, the question then comes in as to what capacity of storage is provided, and the proportion of the capital charge is decreased as storage removes the fire demand from the water works structures reaching out to the storage reservoirs. The storage reservoirs themselves are for the annual equalization of water supply and are not a part of the investment is affected by fire demand.

Q. Now, Mr. Pirnie, that last method of figuring the cost in the size of pipe, is that a correct method of figuring?

A. That is a method of making charges comparable with those made in other communities for the service rendered. It is not a computation of the actual cost of fire protection service through the water system. The cost is usually considerably above that.

Q. Then those figures which you have given are below, in your opinion, the actual cost of fire service?

A. As an average condition that would be so. I cannot answer for the City of Norfolk system without a knowledge of the integral parts of the system and just how they are arranged, but as an average condition that would page 394 } be true.

Q. Now, is the amount allowed by the auditors here of \$50 per fire hydrant in the City of Norfolk an adequate price for the protection of fire in the city—protection against fire in the city?

A. No, that is substantially below what the cost of fire protection would be under these conditions.

Q. Now, Mr. Pirnie, how is it a service that costs around \$160,000 per year is furnished to the City without charge when sufficient revenues are being collected to pay operating expenses, interest on bonds, and sinking fund requirements?

A. That is possible simply because the water is sold at a substantial amount above cost of water service alone to gain from that difference enough money to pay the cost of fire protection service.

Q. Have you examined the reports of the auditors?

A. Yes.

Q. Introduced here in testimony this morning?

A. Yes.

Q. Has there been any depreciation fund set up in those reports?

A. Not so marked, no.

Q. Now, if they treat the sinking fund as a depreciation fund instead of a sinking fund, how much greater is the sinking requirement on thirty year bonds than the requirements to build up funds equal to depreciation, especially when that sinking fund is deposited on a four per cent basis?

A. I have heard the testimony also that every capital addition and every replacement of a part of the property that is no longer useful is made by payment out of the bond account, or out of the capital account. In my judgment the contributions to the sinking fund to retire bonds in thirty years which were being made is at least fifty per cent more than would be required to make in the form of a contribution to a fund from which you would pay the remaining value of property that you discard, and it would, in addition to that, represent the accumulated deferred maintenance and the other loss of value which cannot be corrected by me.

By the Court:

Q. I gather from your statement that the sinking fund provided in the general scheme of Norfolk Water Department is about twice as much as would be necessary to keep the plant in condition and to absorb certain parts of the plant that became obsolete or of no value?

A. That is not quite it. I said it was fifty per cent greater than the amount. The amount would not be in excess of two-thirds of the sinking fund. The other one-third would be clearly payment for purchasing the plant year by year.

Q. Retiring the debt—liquidating the original purchase?

A. Yes. In other words, it is clearly more, and it is so clearly more that in the cases that have come before our technical board of review in Washington for lending money on thirty year bonds, on the bonds given out as serial bonds we have never required any allowance for depreciation in the differential set-up for those projects.

By Mr. Godwin:

Q. In other words, the bonds would pay for the plant in the period of thirty years?

A. The annual sinking fund contribution is made sufficient to pay the full face value of the bonds in thirty years.

Q. Now, you have heard this morning Mr. Taylor testify that his properties, in accordance with their values, are divided into three ways, Mr. Pirnie,—reservoirs, pipe lines and so forth. What is the average life in a lake such as Lake Prince?

A. That is a question of judgment or management entirely when you are dealing with properties of such long life that nobody can tell today just how long it will be serviceable.

The Court: Are you referring now to Lake Prince reservoir?

Mr. Godwin: Yes, sir.

A. I cannot visualize today (I don't know whether Mr. Taylor would, or not) at any time when Lake Prince in the future would not be useful to the City of Norfolk; but I do not claim to be infallible to the extent that I would in operating a company estimate its life at over 100 years. I would say that that is a fair estimate to make, that it would
page 397 } certainly run 100 years, and I would set up my ideas of depreciation on that basis in an operating way.

By Mr. Godwin:

Q. Then, the reservoirs themselves do not depreciate?

Mr. Sebrell: He didn't say that.

By Mr. Godwin:

Q. You would give them 100 years?

A. It may be 500 years.

The Court: He told you that he doesn't know and none of us know.

By Mr. Godwin:

Q. If you curtail its life to 100 years, how much would it require to go into a sinking fund to take care of that if it depreciated in that 100 years to obsolescence or no further use? Have you a total of annuities?

A. I have looked that up. It would require a payment of eight and one-tenth cents of a dollar of value each year for the 100 years into a four per cent sinking fund. That would be .081 per cent per year.

Q. In other words, in common figures that is 81/1000 per cent a year?

A. That is correct.

Q. Now, Mr. Taylor has given as his other basis of calculation one-third of the distribution system, or the pipe line, and he has given in the record the average
page 398 } life to be seventy years. Now, what figure would it take in a bond figure at four per cent to retire that and pay for the property at the end of its life?

The Court: How long did you say?

Mr. Godwin: Seventy years.

Mr. Sebrell: Your expert says sixty.

Mr. Godwin: We will take it both ways, sixty and seventy so there will not be any question about it.

A. The payment into a four per cent sinking fund would be .27 per cent per year for seventy years or .42 per cent per annum for sixty years.

By Mr. Godwin:

Q. Then it is 27/100 of one per cent on the year basis and it is 42/100 of one per cent on the sixty year basis?

A. That is correct.

Q. Retiring these bonds in the thirty year period, what are they actually contributing to the sinking fund?

A. If the sinking fund is set up on a four per cent basis, which checks very closely for retiring of bonds in the full thirty year period, it would be 1.78 per cent per year.

Q. Now, Mr. Pirnie, if Norfolk is allowed all operating costs, maintenance and replacement, should there be any additions allowed for depreciation? If it is allowed all operating costs, maintenance of its utilities and replacements, should there be any additional sum allowed for depreciation?

A. No. That is all that is necessary to keep page 399 } the plant up to the use of the community.

Q. Now, have you studied an analysis of the waters of the Norfolk water system and the methods by which its waters have been corrected?

A. I have studied the tabulations in the report of the Department—one of the departmental reports which I accept as one of the records that exist of these properties.

Mr. Sebrell: That is exactly the same question.

Mr. Godwin: I will prove it.

Mr. Sebrell: But until you do it, it is not evidence.

Mr. Godwin: I assure you I will prove this report.

The Court: All right. For the present I overrule it.

Mr. Sebrell: I save the point.

By Mr. Godwin:

Q. Are those waters now as harmful to pipes as they were a few years back?

A. The water, as now furnished, is less corrosive than it was in the early days of the operation of the Moore's Bridges Plant, before they corrected the acidity to the extent that they now do it.

Q. Mr. Taylor referred to this Underwriters' report in his testimony given here some time ago. In statement page 400 } ing that his pipes were designed for 100 pound pressure per square inch, and that he could not maintain the pressure required by the Underwriters, do you know what the Underwriters required?

A. They recommended that the City increase the pressure in the distribution system during conditions of maximum demand other than fire to a minimum of sixty-five. That, of course, requires an increased head above that in some parts of the system, depending upon the consumption.

Q. Now, it has been estimated that a depreciation charge for the City of Norfolk water system should be \$210,000 annually. Now, assuming that the property is worth eleven million today, how long would it take the City to completely pay for its properties at that rate?

A. By putting money into a four per cent sinking fund?

Q. Yes.

A. Will you state the figures again?

Q. \$210,000 per year. Assuming that the plant is worth \$11,000,000 today.

A. That would be equivalent to an annual contribution to the sinking fund of 1.91 per cent per year. It would take between twenty-eight and twenty-nine years (closer to twenty-eight years) to pay back the \$11,000,000.

Q. From your experience and in your opinion, do you feel that those properties will be obsolete, gone and page 401 } depreciated out of existence, within that period of time?

A. No, they will not.

Q. Then, is the sum of \$210,000 a fair annual depreciation on that plant?

A. Before answering that, I would like to state that I have seen many operators of both publicly and privately owned plants who, in setting up their operations, like to include in an allowance for depreciation everything that they can get in if they have faith in the soundness of the investment in the plant, because it makes it easier to purchase, for the employer or owner, whether it be City or company, the assets of the plant. As one method in a plant that is earning good returns on its operations, it is good management to put in as much as you can for a reserve for depreciation; but it is further clear, from experience, that the plant does not depreciate at any such rate, and this makes it possible to purchase the plant over a period of years.

Q. I hand you here an exhibit that has been put in evidence, and it is the statement (the Water Department state-

ment) in the report of 1927, and I will ask you how many feet of pipe that shows in the total system of the City of Norfolk?

A. 2,015,280 feet in the system on the 31st of December, 1927.

Q. And the amount of feet of pipe in the system in 1927 is shown to be greater than the number of feet
page 402 } that you have made your calculation on in 1932,
doesn't it?

A. Yes, because this contains pipe that I did not consider—four inches and less.

By Mr. Sebrell:

Q. Then you don't know whether that is right or the other is right. You are surmising.

By Mr. Godwin:

Q. Does that statement show that they are constantly taking out and adding to the system?

A. It does.

Q. Then the figures which you have just given here are approximately the same for each year in question, are they not, Mr. Pirnie, on the basis of size of pipe and number of fire hydrants?

A. They would tend gradually to increase as the system grows.

Q. Now, Mr. Pirnie, I would like for you to state whether or not you have taken the rates charged by the City of Norfolk, the pumpage as shown in these reports that have been introduced in evidence, and tabulated them and ascertained whether or not the City of Norfolk is making a profit on the water that is pumped from Nansemond County and its utilities here?

Mr. Sebrell: I submit that he can testify to
page 403 } facts, but conclusions I object to.

By Mr. Godwin:

Q. Just state the figures.

A. The figures that I have used in this study indicate that in the year 1932, 4,406,000,000 gallons, in round numbers, were filtered and pumped from the Moore's Bridges and Lake Prince 37th Street Station into the system. The water pumped from the Lake Prince 37th Street Station was, 2,797,000,000 gallons, which is sixty-three and a half per cent of the water pumped from both stations during that whole year. The cost of the Lake Prince division operations and the Lake Prince 37th Street division operations in that year

total \$68,159.02. That is operating expense exclusive of capital charges.

By Mr. Sebrell:

Q. What year is that?

A. 1932.

Q. What was the amount?

A. Operating cost of the Lake Prince 37th Street division and of the Lake Prince division came to \$68,159.02.

Q. There is no such evidence as that in this court.

Mr. Godwin: He is telling you what he has done from the record.

Witness: I have not heard all the evidence, and I am taking the figures from the records.

Mr. Sebrell: There is no such record introduced in this Court.

page 404 } By Mr. Godwin:

Q. You took that from the amount of pumpage shown by the different plants for that year, did you not?

A. I took it from the statement of the expenditures and then the divisions for that year.

Q. The expenses in these records here?

Mr. Sebrell: What records do you mean?

Mr. Godwin: Here is the 1932 report, which we introduced in evidence, Mr. Taylor showing exactly what the pumpage was and how much it cost per million gallons.

Mr. Sebrell: There is no such statement as that in evidence.

Mr. Godwin: I will show you one. Here they are in these reports of the Water Department which are in evidence, and there is the cost right there, and this report covers from 1921 to 1930.

The Court: Are you not making some deductions from the general report? Let him go along.

Mr. Godwin: All right, go along.

Witness: The cost per million gallons of the production, filtering and pumping of the Lake Prince water to the system is the extent that I have stated, divided by the 2,797,000,000 drawn from this source, or \$24.37 per million gallons.

page 405 } By Mr. Godwin:

Q. For which, at their rate, was how much?

A. That is simply operating expense. The rate for that year of selling water to the consumer is \$201.42 per million gallons. That is the rate at which it was billed. The superintendence and collection and office expenses amounted to \$6.26 per million gallons; Inspection Division \$3.15 per million gallons; Mechanical Division \$7.937 per million gallons; Fishing Division forty-eight cents and eight-tenths per million gallons. The total cost of operation \$42.205 per million gallons. This left \$159.22 per million gallons to pay all other costs and profits. The outstanding bonds, at the end of 1932, were \$8,974,771.27. From Mr. Taylor's testimony the share of the six million dollar issue to build the Lake Prince supply and make improvements in the rest of the system was approximately two-thirds of the six million dollars, or four million dollars. That is all relatively new plant, and I have deducted that \$4,000,000 from the \$8,974,771.27 outstanding bonds, from which I find that the balance of the system represents \$4,974,771.27. Now, of that investment is required approximately 48.7 per cent for fire protection service, which amounts to \$2,420,000 in round numbers. If I deduct that I get the balance required for water service \$2,554,771.27. If I take, therefore, the outstanding bonds required for water service alone, without fire protection service, of \$2,554,000 and add to that the \$4,000,-

page 406 } 000 for the Lake Prince supply, I find \$6,554,771, amounting to seventy-three and a half per cent of the total outstanding bonds. Now, the interest and sinking fund payments in 1932 were \$612,593.32. I take in round numbers seventy-three and two-tenths per cent of that and divide by the total million gallons of water that was served through the system, whether or not that came from Moore's Bridges or Lake Prince, as the average cost of distributing this water per million gallons, and find it amounts to \$102.00 in round numbers per million gallons. If I add to that operating cost of \$42.20, I find that the total cost of storing, transmitting, filtering, pumping and delivering to the consumer of the water from Lake Prince to be \$144.20 per million gallons, for which the average price charged on the basis of the combined water bills for that year is \$201.42, or, in other words, the water is sold at approximately 140 per cent of the cost, which simply substantiates the statement I made a while ago that the water must be sold at more than the cost for furnishing and distributing it throughout the same time in order to pay for the cost of fire protection.

Q. Now, Mr. Pirnie, Norfolk citizens, from this audit, are not the only ones paying for that fire protection, are they?

A. No.

Q. That fire protection is being paid for partially by people who do not live in Norfolk?

A. Insofar as it is paid at a higher price for the page 407 } water.

CROSS EXAMINATION.

By Mr. Sebrell:

Q. Mr. Pirnie, how long ago was it that you came down here to make this survey in regard to the water works? That was before this system was developed, wasn't it?

A. It was twenty-two years or more ago.

Q. Have you been over the water works or the plant since that time?

A. I have visited it, yes.

Q. When?

A. When there was a meeting of the Virginia Water and Sewerage Association in Norfolk, Mr. Taylor took me to see the Lake Prince development, and it was shortly after it was built. On another occasion, when I was here at a meeting of the American Society of Civil Engineers, I visited the filter plant at 37th Street and also the works at Moore's Bridges. I think Mr. Taylor took me to Moore's Bridges, too.

Q. That was while you were visiting one of these societies you came down and saw the physical outlay in a few minutes?

A. Yes.

Q. You never made a survey of it?

A. No.

page 408 } Q. You have never made a physical survey of the plant and its condition yourself?

A. No.

Q. What you are testifying about as an expert witness is in regard to reports and various comparisons of reports made to you?

A. I am testifying in regard to the records I had to study since I have been here this time in relation to my general experience on water works properties.

Q. You have not examined any of the pipes to see what their condition is?

A. No.

Q. You have not examined any of the buildings nor machinery to see what the condition is?

A. Except as I could see superficially the plants were in good repair when I saw them.

Q. Several years ago, wasn't it?

A. Yes.

Q. Is it not a fact that water plants, like most any other kind of institution, begin to depreciate as soon as you put them in operation and continue during the life of the plant?

A. For the structural part of the plant that is true.

Q. In other words, the general plant begins to depreciate from the time it begins operating, and you could not tell accurately the actual depreciation during any particular year, could you?

A. From the information I have available now I could not.

Q. You have to more or less estimate how much depreciation there had been with regard to particular pieces of pipe, for instance, because they do not deteriorate the same amount each year, do they?

A. No.

Q. So you could not give more than an estimate at any time what the depreciation would be?

A. That is true, what it will be in the future.

Q. Now, a person who had actually seen the greater part of the stuff and had seen how it actually did depreciate, if he had the same capacity for understanding, he would be in a better position to determine how much depreciation there would be than a person who had never seen it at all and did not know the conditions, wouldn't he?

A. If they were of the same general experience, that would be true.

Q. The advantage of seeing it and having knowledge of it would help a man who is capable of making a proper estimate?

A. It is essential to be able to see parts of the property.

Q. In other words, it is, at most, speculation and guess?

A. It is always a guess and speculation when forecasting depreciation.

Q. And especially when you have to do it on some hearsay testimony which you do not know is correct, or not?

A. I did not get that last?

Q. I say it is more of a speculation when you have to do it upon information that you have gotten from other people than from your own knowledge of facts?

A. It might be, but you might be closer to the facts.

Q. The man who knew the facts would be in better position to tell the condition than a fellow who did not know the facts?

A. He should be.

Q. Do you know Mr. J. N. Chester?

A. I know him quite well, yes.

Q. He is a civil engineer of reputation, isn't he?

A. Yes.

Q. He is a water works man of national reputation, isn't he?

A. Yes. He owns a number of water companies.

Q. You know him quite intimately and you know something about his ability, do you not?

A. I do.

Q. Is he a man qualified to speak as an expert upon the same subjects that you have spoken of—the question of depreciation and water rates?

page 411 } A. He is so regarded.

Q. Do you think that he is a reliable man in that particular?

A. Yes.

RE-DIRECT EXAMINATION.

By Mr. Godwin:

Q. If Mr. Chester says that this plant has a depreciation of \$210,000 a year, do you agree with him?

A. No.

Q. Now, the method of arriving at that \$210,000, Mr. Pirnie, was in the following manner, and I want to ask you is it a proper basis of determining depreciation: (Reading from page 22 of the record) "The City of Norfolk, since 1872, has spent an average of \$200,000 a year for its water property. Or, stated in another way, since 1922, when Lake Prince was built, we have spent \$500,000 a year to keep up with the needs of the Water Department." Which refers to—

Mr. Sebrell: He didn't say that in there.

By Mr. Godwin:

Q. (Continuing) —which refers to the six million dollars for building Lake Prince. (Reading) "So, in stating \$160,000 a year would be required to keep the plant intact, in my opinion that is not overstated. I think that is borne out by items of the present water properties, with each item listed as to its cost and as to the life that I think we can with assurance state that it is good for, and I arrive at a figure of \$210,000 instead of \$160,000 for depreciation." Now, Mr. Pirnie, assuming that the present value of the water plant is \$11,000,000—

Mr. Sebrell: (Interposing) You asked Mr. Pirnie that question.

Mr. Godwin: I have not asked him a thing about this.

By Mr. Godwin:

Q. Assuming that the plant is now worth approximately \$12,000,000, is that \$200,000 a year that they put in depreciation or is it increment in the value of the plant that has built it up to a value of \$12,000,000?

A. \$200,000 a year for sixty-two years would be \$12,400,000.

Q. Now, if you charge \$210,000 a year for depreciation, the plant over a period of sixty years would have been worth \$620,000 less than nothing, wouldn't it?

A. Based on the assumption, it is a correct deduction.

page 413 } CHARLES H. BLIVEN,
called as a witness on behalf of the County of
Nansemond, being duly sworn, testified as follows:

Examined by Mr. Godwin:

Q. Mr. Bliven, I want to ask you if this report that was made in 1932 by the Water Department, or the agents of the Water Department, in Norfolk, in reference to the chemical analysis of the water, is true?

Mr. Sebrell: Who made the statement? I am going to object to the question, if your Honor please, on the ground that Mr. Bliven did not make that analysis, and he cannot prove by Mr. Bliven what the chief chemist did.

By Mr. Godwin:

Q. Who filed that statement? It is put out by your department, is it not?

A. Of the analysis, do you mean?

Q. Yes.

A. The Chief chemist. I had nothing to do with it.

Q. Who was that report submitted to?

A. The chemist's report was submitted to me.

Q. And you filed it with the records of your office as the true condition of the plant so far as water was concerned?

A. Yes.

Q. And these reports in reference to the number of feet of pipe for that year and in reference to the chemical analysis of the water are true, to the best of your
page 414 } knowledge and belief, are they not?

Mr. Sebrell: One minute. Anybody could testify to that, "True to the best of his knowledge and belief", but here is a report—we had as well come down to the question before us.

He is trying to prove that report by somebody who did not make the report and whom I cannot question at all as to where he got the information. Mr. Bliven can look at it and say so far as he knows it is true, but he does not know whether it is true, and I do not think he can prove the report in that way.

Mr. Godwin: Suppose, for instance, that a bank, the president of an institution, was testifying as to the financial set-up of his institution, could he testify to that, or would every man in his bank have to come to court and testify how those figures were produced?

Mr. Sebrell: I assume if the man would testify to the finances of the bank, he would have the books.

The Court: I think where a report of this character is found in possession of the City of Norfolk, as in this case, on which the City has acted, that has come from its employees or those under its control, that if they want to surcharge or falsify the report, it is up to them to do it. I think that the other side has the right to assume that they are page 415 } correct and if there is any error in them the City should show it as the facts are in their possession, and I will assume that the report is correct unless you prove it to the contrary. I will give you ample opportunity to prove it.

Mr. Sebrell: I want to save the point.

Mr. Godwin: Wasn't that report—you made your report to the City Manager?

A. Yes.

By Mr. Godwin:

Q. Why did your Department compile those figures?

A. Those figures were compiled in my office and these were reported to Mr. Pleasant as to transactions in the Water Department, and it only included payments that went through the Water Department, and any other payments it would not show.

Q. Does that correctly show the number of feet of pipe in your system and the kind and sizes?

A. Yes, it does.

Q. What are the number of feet of pipe in your system?

A. Do you have reference to the distribution system?

Q. The whole entire system.

A. In the distribution system we have 1,190,223 feet; in the fire main system we have 149,599 feet.

Q. That statement also contains the chemical page 416 } analysis of water as shown by your chemist in your Department, doesn't it?

A. It does.

Q. Now, Mr. Bliven, Mr. Maury, who was a consulting engineer, made a detail study of the revenues of your Department in 1923, did he not?

Mr. Sebrell: Who made that statement?

Mr. Godwin: I am asking him.

Mr. Sebrell: No, you are testifying positively that he did. I object to the statement, as any statement Mr. Maury made is not evidence in this case, and, so far as making a detail study, nobody knows except Mr. Maury.

The Court: I don't know myself, but I suppose Mr. Bliven will probably answer that question whether he knows, or not. Counsel has assumed certain things; Mr. Bliven can answer if he knows.

A. Col. Maury was employed to make a report as to the rates and so forth. The date I don't know.

By Mr. Godwin:

Q. This is a copy of his report, is it not, as filed in your office?

A. Yes.

Q. How long was Mr. Maury in preparing this report, approximately?

A. I would not like to say.

page 417 } Q. Did he make a very exhaustive study of your revenues in the City of Norfolk?

A. He would have to make a report of that nature.

Q. Who employed him to make this report?

A. I think that was authorized by the City Council, but I don't know how that was handed down.

Q. And he made the report and you all received the report and filed it in your office, did you not?

A. It was not filed in our office. It was a report submitted to Mr. Taylor, Director of Public Works, and it did not come to Water Office.

Q. In that report Mr. Maury, employed by the City and its agent, made a report to the City and advised that it charge twenty-five per cent of the capacity charges which are in the form of interest and depreciation to the City for fire purposes, did he not?

A. Yes.

Mr. Sebrell: I object to that on the ground that this question is not doing a thing in the world but having Col. Maury testify through Mr. Bliven, a man who happens to be an em-

ployee of the Water Department, who says that this was a report, and that he had no connection with the report.

Mr. Godwin: Your Honor, I do not know of any better way to prove a fact than to prove it out of the page 418 } mouth of an agent and employee of the department—statements and reports filed by them in reference to these things.

The Court: It is a very different thing proving that that report was made by Col. Maury and proving that he recommended something. His recommendations are different propositions, and I do not think that is proper testimony. You can prove that he filed that statement, but giving it the benefit of his statement, I do not think so. He is dead now and they cannot question him on whether these recommendations are sound and whether they are based on sufficient knowledge. I do not think the recommendation should have proper weight.

Mr. Godwin: I want to prove the statement in the record, and if the Court excludes it I will except.

By Mr. Godwin:

Q. He also recommended that five per cent of the total operating expense be charged to the City of Norfolk?

Mr. Sebrell: The Court ruled, and you are doing it this way.

The Court: I suppose that he is bringing it in to get an exception to it.

Mr. Godwin: That is right.

The Court: I sustain the objection to the question.

page 419 } By Mr. Godwin:

Q. In addition to that, he reported and advised, from a study of your rates, that that be done to put the Water Department on a sound financial basis, in 1923, did he not?

Mr. Sebrell: I object on the same ground.

The Court: Objection sustained.

By Mr. Godwin:

Q. And to meet that situation, twenty-five per cent additional was placed upon the consumers, especially any small water consumers, instead of placing it against the Fire Department?

Mr. Sebrell: I object to that.

The Court: The objection to that is overruled. If Mr. Bliven can testify to that as a fact, I think it is entirely proper.

A. What was the question?

By Mr. Godwin:

Q. After the Maury report, in order to put the Department on a sound financial basis, an increase was made in water rates to the consumers rather than to have the City bear a proportion of the cost?

A. I don't think that was the case. If you will let me see the report, I can tell you.

Q. Take the present rates and the rates proposed there, and see if you did not increase them twenty-five per cent on the small water consumer?

page 420 } Mr. Sebrell: Do you know whether that is a fact, or not?

Witness: I do not.

Mr. Sebrell: The Court wants you to testify of your own knowledge and not as to Col. Maury or anybody else.

By Mr. Godwin:

Q. Do you know what the rates were when Mr. Maury made that report?

A. No, I do not, but I know this, that you have a schedule of water rates, or did have, as adopted December 1, 1924.

Q. In order to refresh your memory in reference to the rates charged prior to that, are they the rates that were in force in Norfolk (handing witness paper)?

A. They are not.

Q. They are not?

A. No, sir, at the present time.

Q. Were they the rates prior to 1923?

A. I am sorry I cannot answer that question because I do not recall the rates in 1923.

Q. You have not had but one?

Mr. Sebrell: I object to the question.

Witness: These rates are not the same as these rates, according to the first question.

page 421 } By Mr. Godwin:

Q. Are they substantially the rates in 1923? You have had one change in rates since 1923, haven't you?

A. Only one change in rates is correct.

Q. Therefore, you operated on one basis prior to 1923 and the present ordinance since 1924?

A. The present ordinance since 1924, and the change in rate, according to this, in 1923. I cannot recall the rates, but I think that these are the correct rates.

Q. You do?

A. Yes, sir.

Q. Hasn't the City of Norfolk, in order to put the Water Department on its present financial basis, increased the price to consumers, local consumers, rather than charge the City itself for fire protection?

A. I can answer that only in this way: The rates adopted in 1923 were not sufficient to make the Water Department self-supporting, and they changed the rate.

Q. And they did not charge the City anything for fire protection?

A. They did not.

By Mr. Sebrell:

Q. They had never charged the City anything for fire protection in the Water Department, had they?

A. No.

page 422 }

FRED F. AMES,

a witness on behalf of the County of Nansemond,
being duly sworn, testified as follows:

Examined by Mr. Godwin:

Q. Mr. Ames, what is your occupation?

A. Certified Public Accountant.

Q. What is your address?

A. Norfolk.

Q. Have you been over and helped compile and compare the figures in the audit introduced here this morning, as compiled by W. P. Jordan & Company?

A. I have.

Q. Are those figures in that audit correct?

A. I think so.

Q. And you also, in the course of your profession, audited the books of the City of Norfolk?

A. I made the audit for the year 1929.

Q. Mr. Ames, in the books of the City of Norfolk, is there any fund set aside for depreciation?

A. There is no fund set aside for depreciation on water property.

Q. You heard the testimony of Mr. Jordan this morning, did you not?

A. Yes.

Q. Was his testimony correct?

A. Absolutely.

Q. Mr. Ames, from an accountant's standpoint, if the City is allowed the cost of repairs, replacements and page 423 } maintenance, should it, in addition, be allowed a fund for depreciation?

A. Depreciation would be automatically taken care of by replacement and maintenance. There would be no extra charge.

Q. Is there any way to determine, from an accountant's standpoint, an exact figure in a lump sum for depreciation?

A. No.

Q. Why not?

A. The plant account is not segregated or analyzed in any way. You could not split it up into different units.

Q. You mean the different units taken and different rate of depreciation?

A. Yes.

Q. And without a basic valuation, that is impossible?

A. Yes.

Q. And there is no such basic valuation?

A. No.

Q. Have you also checked the amount of replacements that have been made to this plant in the past seven years?

A. Yes, sir.

Q. Did you go over every item in the audit for the period of seven years?

A. Yes, sir.

Q. And picked out the replacements?
page 424 } A. Yes.

Q. How much did it amount to?

A. \$26,255.00.

Q. The other items are for additions to the system, are they not?

A. For additions and extensions.

Q. Which additions and extensions are made for the purpose of additional revenue, are they not?

Mr. Sebrell: I object to the question.

The Court: Objection sustained.

Mr. Godwin: Exception.

By Mr. Godwin:

Q. Now, have you been around to the City Court House and seen a map filed in the annexation proceedings in 1923?

A. I have.

Q. Have you also read the ordinance?

A. Yes.

Q. Was the Naval Base property of the Federal Government and the Army Base property of the Federal Government prior to the annexation ordinance?

A. It was.

page 425 } CROSS EXAMINATION.

By Mr. Sebrell:

Q. You say that they were prior to the annexation?

A. Yes.

Q. The boundary line of Norfolk City includes the Naval Base?

A. Apparently, yes.

Q. And the Army Base?

A. Yes.

Q. Now, Mr. Ames, you said you made the audit for Norfolk City in 1929?

A. Yes.

Q. I file that audit as a part of the evidence in this case. That ordinance is correct, is it not? You made a correct audit for Norfolk City?

A. Yes.

Q. And every bit of it is correct?

A. Yes, as audits are usually made.

Q. You heard Mr. Jordan testify this morning that so far as the books are concerned, except with regard to the one in which they charged off a conditional amount, and he charged off an extra amount, the figures correspond?

A. Yes.

page 426 } Mr. Godwin: That is the case. If it is not in evidence, I want it in evidence, the report of W. P. Jordan & Company. I want to offer in evidence the report of Mr. Maury insofar as it pertains to fire service.

Mr. Sebrell: I object to it on the ground that we have already argued, that it is nothing but a statement or recommendation, and it is hearsay entirely, and he is not here to be cross-examined.

The Court: Some questions the witness testified to about the report, I don't know whether the report is necessary to make that evidence intelligible, or not. The report of Maury I do not think is proper testimony. I think the witness testified to practically everything that is legitimate to go in. You offer it and I decline to let it go in, and you can except

Mr. Godwin: I will leave it as it is. I want to introduce the contract which we have put in the record.

Mr. Sebrell: I introduce it.

Mr. Godwin: There is another contract where they took over the water supply of the town of Berkley, and Mr. Sebrell has furnished me with a copy of it, and I would like to introduce that in evidence.

The Court: All right.

page 427 } Note: The paper referred to is filed marked
Contract, and is as follows:

"COPY

"WHEREAS, the Town of Berkley, by an ordinance passed June 8th, 1893, granted to the Berkley and South Norfolk Water and Electric Light Company a franchise to construct and maintain water works in said town, and to contract with said Company for a supply of water for public and private use, and giving the said town the option to purchase the said works established and erected under and by virtue of said franchise; and

"WHEREAS, the said Town of Berkley has been annexed to the City of Norfolk, and the said City of Norfolk has succeeded to all of the rights and obligations of the said Town of Berkley under the said franchise; and

"Whereas, the Portsmouth, Berkley & Suffolk Water Company has succeeded to all the rights and obligations of the said Berkley and South Norfolk Water and Electric Light Company under the said franchise; and

"WHEREAS, the said franchise contained the following provision:—

"The said town of Berkley has the privilege of purchasing the Water Works that may be established and erected under and by virtue of this franchise any time after the expiration of twenty years from the date of this franchise by giving a six months' notice in writing of its intention to purchase, at their commercial or fair market value, to be de-

terminated by arbitration, one arbitrator to be chosen by the town of Berkley and one by the grantee herein, page 428 } its assigns or the Water Works Company and an umpire to be chosen by the said two arbitrators, no one of whom shall be residents of the County of Norfolk, Virginia, and all of whom shall be disinterested persons. If the town of Berkley elects not to purchase the said water works then the franchise and privilege herein granted to the said grantee and its assigns shall be extended and continued for twenty years longer under like terms and conditions."

"WHEREAS, there is some doubt and confusion as to when the time of the said City of Norfolk is to give the said notice and exercise its said privilege of purchasing the said plant until the franchise expires, and it is the desire of both parties to this contract that the said city shall have a further period to exercise its said privilege of purchase under the terms of said franchise, except as herein otherwise provided:

"NOW, THEREFORE, this contract made and entered into this first day of October, 1917, by and between the Portsmouth, Berkley and Suffolk Water Company, a corporation duly chartered and organized under the laws of Virginia, party of the first part, and the City of Norfolk, Virginia, a municipal corporation of Virginia, party of the second part;

"WITNESSETH: That, for and in consideration of the premises and the sum of Five (\$5.00) Dollars cash in hand paid to the said party of the first part by the said party of the second part, the receipt whereof is hereby acknowledged, it, the said party of the first part, grants to the said party of the second part the sole and exclusive right, privilege and option, for the period of ten (10) years page 429 } from December 1st, 1917, to purchase, at any and all times during said period of time, upon the terms and conditions, except as herein otherwise provided, as set forth in the certain said ordinance from the town of Berkley to the Berkley and South Norfolk Water and Electric Light Company granted June 8th, 1893, the water works established and erected under and by virtue of said franchise, by giving six months' notice in writing of its intention to purchase, at their commercial or fair value, to be determined by arbitration, one arbitrator to be chosen by the City of Norfolk, and one to

be chosen by the party of the first part, or its successors or assigns, and an umpire to be chosen by said two arbitrators, no one of whom shall be resident of the cities of Norfolk, Portsmouth or Suffolk, or within the Counties of Norfolk or Nansemond, and all of whom shall be disinterested parties.

“Upon the purchase of the said water works under the terms of the contract, the said Portsmouth, Berkley & Suffolk Water Company will transfer or surrender to the City of Norfolk the unexpired term of said franchise under and by virtue of which the said water works is or was erected, constructed, operated or maintained, provided, however, that in no case shall the value of the said franchise of the said party of the first part, its successors or assigns—which said franchise may be extended by the failure of
page 430 } the City of Norfolk to exercise its privilege to purchase said water works in accordance with Section Thirteen (13) of said ordinance granted June 8th, 1893—be considered or taken into account in the fixing of said valuation of said water works.

“In the event the City of Norfolk shall, under the terms hereof, at any time prior to the first day of December, 1918, purchase and acquire the property herein set forth according to the terms hereof, then and in that event the said City of Norfolk shall, as a part of the purchase price for said property, assume the payment at the maturity thereof, and all interest accrued thereon, of the One Hundred and Fifty Thousand Dollars (\$150,000) of bonds issued by the Berkley and South Norfolk Water and Electric Light Company, one of the constituent companies of the Portsmouth, Berkley & Suffolk Water Company, which said bonds are secured by a mortgage or deed of trust, dated the first day of December, 1893, made by the Berkley and South Norfolk Water and Electric Light Company to the Delaware County Trust Company, as Trustee, which said deed is duly recorded in the Clerk's Office of the Circuit Court of Norfolk County, in Deed Book 183, page 560 *et seq.*

“OR, if the City of Norfolk shall exercise this option to purchase the said property, and if the said mortgage or deed of trust, dated the first day of December, 1893,
page 431 } made by the Berkley and South Norfolk Water and Electric Light Company to the Delaware County Trust Company, as Trustee, shall not have been paid off and satisfied at its maturity, or any extension thereof, the said City of Norfolk shall have the privilege of depositing with the Trustee, i. e., Delaware County Trust Company—the principal and interest thereon which may be then due and

required to pay off such mortgage, and deduct such principal sum from the amount determined as the purchase price of said property, paying therefore to the Portsmouth, Berkley & Suffolk Water Company the remainder of said purchase price in full acquittance and satisfaction of the total purchase price herein contemplated.

"It is understood that any exercise of this option by the City of Norfolk shall require the party of the first part to sell and shall require the party of the second part to buy all of the property of the party of the first part within Washington Magisterial District, Norfolk County, Virginia, under the same terms, restrictions and conditions as are hereinabove set forth relative to the acquisition by the City of Norfolk of the property of the said party of the first part in that portion of Washington Ward, Norfolk, Virginia, formerly known as the Town of Berkley.

"This agreement, when executed, shall be in substitution of and shall cancel and make void the agreement dated the 21st day of December, 1915, made by the Portsmouth, Berkley & Suffolk Water Company through its proper officers.

"IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed in their respective names and their respective seals duly attached and attested by officers in that behalf duly authorized this first day of October, 1917.

PORTSMOUTH, BERKLEY & SUFFOLK
WATER CO.

By (signed) G. E. HOFFMASTER,
Its President.

(Seal)

Attest:

(signed) J. C. ADAMS,
Its Secretary.

CITY OF NORFOLK,
By (signed) J. C. PRINCE,
President of the Board of Aldermen
(signed) W. S. BENSTEN,
President of the Common Council.

(Seal)

Attest:

(signed) R. E. STEED,
City Clerk."

page 433 } Mr. Sebrell: When we were here before, Mr.
Godwin introduced two letters he had written to
me, and I want to introduce my replies.

Note: These letters here referred to appear in the record at the place where Mr. Godwin introduced his letters to Mr. Sebrell.

Mr. Godwin: That includes the bill of particulars, an exhibit in this case?

Mr. Sebrell: Yes.

End of Testimony.

page 434 }

EXHIBIT

W. P. JORDON NO. 1

DIVISION OF WATER SUPPLY

CITY OF NORFOLK, VIRGINIA

DIVISION OF WATER SUPPLY, CITY OF NORFOLK, VIRGINIA

STATEMENT OF REVENUE AND EXPENSE—ON ACCRUAL BASIS

FOR YEARS ENDED DECEMBER 31, 1927, 1928, 1929, 1930, 1931, 1932 AND 1933

page 435 }

EXHIBIT A

	1927	1928	1929	1930	1931	1932	1933	Total
REVENUES								
Water Rents.....	\$826,953.10	\$831,490.45	\$858,444.44	\$867,391.28	\$866,982.04	\$867,800.07	\$851,349.50	\$5,970,410.88
Incidental Revenues:								
Interest, Virginia Beach Pipe Line.....	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 12,000.00	\$ 84,000.00
Penalties.....	8,272.16	7,345.57	2,054.11	1,246.00	1,007.00	1,266.00	1,260.00	22,450.84
Meter Rents—Fire Purposes.....	541.00	541.00	541.00	541.00	529.00	499.00	.....	3,192.00
Fishing Permits and Privileges.....	5,911.00	3,427.15	3,766.10	6,217.95	5,725.08	3,868.40	3,395.35	32,311.03
Rent of Surplus Land—Farm Purposes.....	675.00	4,479.50	1,479.00	2,600.00	2,077.82	1,200.00	1,647.13	14,158.45
Sales of Junk, Old Equipment, etc.....	19.00	733.72	414.46	1,247.31	269.27	.75	1,287.98	3,972.49
Total Incidental Revenues.....	\$ 27,418.16	\$ 28,526.94	\$ 20,254.67	\$ 23,852.26	\$ 21,608.17	\$ 18,834.15	\$ 19,590.46	\$ 160,084.81
TOTAL GROSS REVENUES.....	\$854,371.26	\$860,017.39	\$878,699.11	\$891,243.54	\$888,590.21	\$886,634.22	\$870,939.96	\$6,130,495.69
Less: Accounts Subsequent to December 31, 1926, Actually Charged Off.....	.....	.....	33,724.62	.....	22,024.22	12,235.24	41,694.24	109,678.32
TOTAL REVENUE, LESS ACCOUNTS SUBSEQUENT TO DECEMBER 31, 1926, ACTUALLY CHARGED OFF.....	\$854,371.26	\$860,017.39	\$844,974.49	\$891,243.54	\$866,565.99	\$874,398.98	\$829,245.72	\$6,020,817.37
DIRECT EXPENSES, EXCLUSIVE OF INTEREST:								
Collecting and Superintendence.....	\$ 33,869.80	\$ 35,570.71	\$ 36,448.74	\$ 36,028.16	\$ 35,574.08	\$ 27,571.52	\$ 22,827.41	\$ 227,890.42
Water Inspection.....	17,143.64	16,072.89	17,115.61	16,866.01	16,483.92	12,922.82	12,554.93	109,159.82
Mechanical Distribution.....	46,795.14	47,391.24	50,481.53	42,284.56	41,843.52	33,503.18	32,679.25	294,978.42
Pumping Stations.....	133,651.69	140,527.45	142,199.33	146,420.38	143,504.19	120,295.09	113,028.91	945,627.04
Fishing.....	3,872.07	2,011.66	2,176.58	1,700.86	3,538.52	2,139.11	1,493.78	16,432.58
Insurance.....	2,676.01	.....	48.00	504.63	469.35	350.80	227.46	4,276.25
Automobile Expense.....	.....	.....	.....	.....	3,522.71	3,016.79	.....	6,539.50
Supplies Inventory (Italic denotes Credits to Expense).....	3,590.20	62.18	578.13	313.97	45.24	477.81	269.98	3,966.41
Storeroom Profit (Italic denotes Loss).....	6,734.08	2,208.78	1,662.67	3,181.88	340.44	1,316.11	1,405.81	14,038.15
Extraordinary Expenses.....	2,785.49	87.90	878.09	.....	.....	1,039.10	3,445.21	8,235.79
Total Direct Expenses, Exclusive of Interest.....	\$237,149.96	\$245,390.89	\$247,107.08	\$240,936.69	\$244,550.61	\$200,000.11	\$187,932.74	\$1,603,068.08
OPERATING PROFITS, EXCLUSIVE OF INTEREST.....	\$617,221.30	\$614,626.50	\$597,867.41	\$650,306.85	\$622,015.38	\$674,398.87	\$641,312.98	\$4,417,749.29
FINANCIAL EXPENSE:								
Interest on Bonded Indebtedness.....	\$454,935.17	\$463,954.90	\$469,003.84	\$471,758.21	\$477,063.71	\$449,699.27	\$449,699.27	\$3,236,114.37
NET PROFIT AS SHOWN BY CITY'S BOOKS (On Basis of Accounts Actually Charged Off, which Accounts are included as Revenue for Period).....	\$162,286.13	\$150,671.60	\$128,863.57	\$178,548.64	\$144,951.87	\$224,699.60	\$191,613.71	\$1,181,634.92
ESTIMATED REVENUE FOR WATER FURNISHED NORFOLK CITY—Schedule 2, Exhibit A—Basis of \$50.00 Per Year Per Hydrant.....	\$ 61,750.00	\$ 62,350.00	\$ 63,250.00	\$ 64,600.00	\$ 65,250.00	\$ 65,500.00	\$ 65,500.00	\$ 448,200.00
NET PROFIT (REPORTED AND NOT REPORTED).....	\$224,036.13	\$213,021.60	\$192,113.57	\$243,148.64	\$210,201.67	\$290,199.60	\$257,113.71	\$1,629,834.92

page 436 }

DIVISION OF WATER SUPPLY, CITY OF NORFOLK, VIRGINIA
WATER RENTS RECEIVED FROM SOURCES OUTSIDE OF CITY OF NORFOLK, VIRGINIA
FOR YEARS ENDED DECEMBER 31, 1927, 1928, 1929, 1930, 1931, 1932 & 1933

SCHEDULE 1

EXHIBIT A

	1927	1928	1929	1930	1931	1932	1933	Total
SOURCE OF WATER RENTS RECEIVED								
Norfolk County—Flat Rates.....	\$ 2,624.23	\$ 3,615.90	\$ 4,146.77	\$ 4,654.70	\$ 4,739.42	\$ 4,724.00	\$ 4,651.70	\$ 29,156.72
Norfolk County—Meters.....	11,363.98	13,844.23	10,028.59	12,904.12	14,092.97	15,525.72	18,335.89	96,095.50
Norfolk County—Portlock.....			675.70	1,314.03	1,557.81	1,611.02	1,760.34	6,918.90
Norfolk County—Monthly.....						2,216.16	3,022.88	5,239.04
South Norfolk—Flat Rates.....	10,678.42	12,488.72	15,159.66	15,150.61	15,117.46	14,530.33	9,125.48	92,250.68
South Norfolk—Meters.....	16,214.60	17,231.74	18,508.64	22,683.34	24,053.66	17,837.83	13,440.13	129,969.94
South Norfolk—Monthly.....	2,083.64	2,207.30	5,684.58	4,362.33	3,237.14	8,796.61	14,372.00	40,743.60
Virginia Beach.....	10,095.71	10,603.78	11,507.14	13,302.09	13,204.50	12,653.54	13,054.84	84,421.60
Princess Anne County—Monthly (Little Creek).....			3,457.68	3,270.07	3,060.90	2,511.63	2,420.64	14,720.91
Total Water Rents from Outside Sources.....	<u>\$53,060.58</u>	<u>\$59,991.67</u>	<u>\$69,168.76</u>	<u>\$77,641.28</u>	<u>\$79,063.86</u>	<u>\$80,406.84</u>	<u>\$80,183.90</u>	<u>\$499,516.89</u>
OTHER REVENUES FROM OUTSIDE SOURCES								
Interest, Virginia Beach Pipe Line.....	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$ 84,000.00
Rent of Surplus Land—Farm Purposes.....	675.00	4,479.50	1,479.00	2,600.00	2,077.82	1,200.00	1,647.13	14,158.45
Fishing Permits and Privileges.....	5,911.00	3,427.15	3,766.10	6,217.95	5,725.08	3,868.40	3,395.35	32,311.03
Total Other Revenues from Outside Sources.....	<u>\$18,586.00</u>	<u>\$19,906.65</u>	<u>\$17,245.10</u>	<u>\$20,817.95</u>	<u>\$19,802.90</u>	<u>\$17,068.40</u>	<u>\$17,042.48</u>	<u>\$130,469.48</u>
TOTAL REVENUES FROM OUTSIDE SOURCES.....	<u>\$71,646.58</u>	<u>\$79,898.32</u>	<u>\$86,413.86</u>	<u>\$98,459.23</u>	<u>\$98,866.76</u>	<u>\$97,475.24</u>	<u>\$97,226.38</u>	<u>\$629,986.37</u>
PERCENT TOTAL OUTSIDE REVENUES BEAR TO TOTAL GROSS REVENUES.....	<u>8.38%</u>	<u>9.29%</u>	<u>9.83%</u>	<u>11.05%</u>	<u>11.12%</u>	<u>10.99%</u>	<u>11.17%</u>	<u>10.28%</u>

NOTE.—The above percentages do not take into consideration estimated revenues for water used by the City and not heretofore billed to it.

page 437 }

DIVISION OF WATER SUPPLY, CITY OF NORFOLK, VIRGINIA
 FIRE HYDRANT INSTALLATIONS—WITHIN AND WITHOUT THE CITY
 DECEMBER 31, 1927, 1928, 1929, 1930, 1931, 1932 AND 1933

SCHEDULE 2
 EXHIBIT A

	1927	1928	1929	1930	1931	1932	1933
TOTAL INSTALLATIONS							
Fire Hydrants in Norfolk, Virginia, Not Charged to City, Estimated \$50.00 Per Annum.....	1,235	1,247	1,265	1,292	1,305	1,310	1,310
Fire Hydrants in Norfolk County (Rents Collected by Water Division) Eight at \$50.00, and Thirty-six at \$100.00.....	31	32	43	44	44	44	44
Fire Hydrants in South Norfolk (Rents Collected by Water Division) \$50.00 Per Annum.....	60	64	66	66	67	67	67
Total Installations, Fire Hydrants.....	<u>1,326</u>	<u>1,343</u>	<u>1,374</u>	<u>1,402</u>	<u>1,416</u>	<u>1,421</u>	<u>1,421</u>

page 438 }

DIVISION OF WATER SUPPLY, CITY OF NORFOLK, VIRGINIA
STATEMENT OF REVENUES DERIVED FROM FEDERAL RESERVATIONS AND PUBLIC CARRIERS
FOR YEARS ENDED DECEMBER 31, 1929, 1930, 1931, 1932, AND 1933

EXHIBIT B

	1929	1930	1931	1932	1933	Total	Rate Per Million Gallons
FEDERAL RESERVATIONS							
Naval Supply Base.....	\$23,685.60	\$27,198.01	\$26,957.91	\$25,749.33	\$20,679.88	\$124,270.73	Regular
Tidewater Terminals, Army Base.....	5,682.54	5,811.78	7,135.78	5,581.15	4,095.00	28,307.25	"
Engineer's Depot, Fort Norfolk.....	841.76	1,059.47	1,503.49	898.12	1,722.70	6,025.54	"
Training Station, St. Helena.....	115.55	135.00	123.75	45.00	.....	449.30	"
United States Marine Hospital.....	2,852.10	3,183.54	3,190.68	3,197.10	3,487.68	15,911.10	"
Coast Guard, St. Helena.....	1,438.96	1,695.59	1,345.66	1,412.00	1,919.14	7,811.35	"
Total Federal Reservations.....	\$34,616.51	\$39,083.39	\$40,258.27	\$36,882.70	\$31,904.40	\$182,775.27	"
PUBLIC CARRIERS							
Norfolk & Western Railway Shops, Lamberts Point.....	\$ 2,569.50	\$ 2,078.27	\$ 2,277.35	\$ 2,356.20	\$ 2,360.28	\$ 11,641.60	Regular
Norfolk & Western Railway—Parker Avenue.....	9,854.12	9,570.65	8,223.88	7,231.36	7,171.68	42,051.69	"
Virginian Railway Piers and Shops.....	6,899.24	6,329.38	5,274.50	5,007.72	4,983.02	28,493.86	"
Southern Railway (Chesapeake Line).....	817.40	829.03	867.75	823.33	550.75	3,888.26	"
Atlantic Coast Line Railway.....	.....	.....	.....	.....	.....	.....	"
Norfolk-Southern Railway.....	621.46	576.72	607.97	2,461.80	2,886.10	7,154.05	"
Pennsylvania Railway (Brooke Avenue).....	1,238.23	1,140.65	1,284.78	1,266.80	874.34	5,834.69	"
Chesapeake and Ohio Railway (Brooke Avenue).....	234.24	289.57	226.37	412.19	269.60	1,431.97	"
Eastern Steamship Company.....	1,378.23	1,495.72	1,312.04	1,350.72	1,256.75	6,793.46	"
Merchants and Miners Transportation Company.....	2,027.81	1,720.96	1,740.15	2,133.67	1,906.67	9,529.26	"
Baltimore Steam Packet Company (Old Bay Line).....	836.65	925.93	921.00	1,178.31	931.52	4,793.41	"
Norfolk and Washington Steam Boat Company.....	795.62	826.75	876.47	1,055.11	804.00	4,357.95	"
Norfolk and Western Railway Grain Elevator.....	950.81	1,046.45	1,054.41	676.69	462.65	4,191.01	"
Chesapeake Ferry Company, Newport News Terminals.....	1,206.14	1,253.16	1,321.76	1,498.80	1,325.92	6,696.78	"
Chesapeake Ferry Company, Old Point Terminals.....	1,009.56	829.56	933.01	807.84	334.86	4,004.83	"
Total Public Carriers.....	\$30,649.01	\$28,912.80	\$26,921.44	\$28,260.54	\$26,119.03	\$140,862.82	"
OTHER MISCELLANEOUS ITEMS							
Norfolk County Ferries.....	\$ 1,214.19	\$ 1,280.50	\$ 1,063.09	\$ 1,043.44	\$ 980.83	\$ 5,582.05	Regular
Wood Towing Company.....	373.60	421.22	437.85	434.96	429.73	2,097.36	"
Southgate Terminal Corporation.....	686.77	340.23	411.73	367.04	237.76	1,993.53	"
Imperial Tobacco Company.....	302.23	358.71	359.10	336.90	103.85	1,460.79	"
Hampton Roads Coal and Bunkering Company.....	6.91	.....	.....	510.28	753.22	1,280.41	"
Total Miscellaneous Items.....	\$ 2,543.70	\$ 2,400.66	\$ 2,271.77	\$ 2,692.62	\$ 2,505.39	\$ 12,414.14	"
TOTAL FEDERAL RESERVATIONS, PUBLIC CARRIERS, AND MISCELLANEOUS ITEMS.....	\$67,839.22	\$70,396.85	\$69,451.48	\$67,835.86	\$60,528.82	\$336,052.23	"

NOTE.—Revenues from all of the above named sources are credited to Water Rentals from Local Sources.

page 439 }

EXHIBIT C

DIVISION OF WATER SUPPLY, CITY OF NORFOLK, VIRGINIA

STATEMENT OF BONDS OUTSTANDING, SINKING FUND

INCREMENTS, NET BONDED INDEBTEDNESS, AND

BOOK VALUES OF WATER PLANT

DECEMBER 31, 1927, 1928, 1929, 1930, 1931, 1932, AND 1933

Year	Bonds Outstanding	Sinking Fund Increment	Net Bonded Indebtedness	Book Value of Water Plant
1927.....	\$9,415,821.65	\$1,483,015.16	\$7,932,806.49	\$11,545,781.20
1928.....	9,415,821.65	1,702,954.45	7,712,954.45	11,607,895.03
1929.....	9,511,821.65	1,945,965.09	7,565,856.56	11,697,036.69
1930.....	9,647,821.65	2,191,182.79	7,456,638.86	11,786,625.60
*1931.....	9,647,821.65	2,446,122.83	7,201,698.82	11,838,119.72
1932.....	8,974,771.27	2,015,252.19	6,959,252.19	11,866,219.21
1933.....	8,974,771.27	2,258,754.26	6,716,017.01	11,900,634.68

*Bonds in the amount of \$673,050.38 were retired during the year 1931.

page 440 }

DIVISION OF WATER SUPPLY, CITY OF NORFOLK, VIRGINIA
STATEMENT OF CASH RECEIPTS (CURRENT AND PRIOR YEARS) AND EXPENSES (CURRENT YEARS)
FOR YEARS ENDED DECEMBER 31, 1927, 1928, 1929, 1930, 1931, 1932, AND 1933

EXHIBIT D

	1927	1928	1929	1930	1931	1932	1933	Total
REVENUES								
Water Rents.....	\$819,831.74	\$806,659.84	\$834,741.41	\$850,950.41	\$853,626.93	\$833,652.20	\$787,142.78	\$5,786,605.31
Incidental Revenues.....	33,253.50	30,180.12	24,311.65	25,171.53	23,137.06	18,920.19	18,322.48	173,296.53
Total Revenues Collected.....	\$853,085.24	\$836,839.96	\$859,053.06	\$876,121.94	\$876,763.99	\$852,572.39	\$805,465.26	\$5,959,901.84
Direct Expenses, Exclusive of Interest—Exhibit A.....	237,149.96	245,390.89	247,106.08	240,936.69	244,550.61	200,000.11	187,932.74	1,603,067.08
OPERATING PROFITS, EXCLUSIVE OF INTEREST.....	\$615,935.28	\$591,449.07	\$611,946.98	\$635,185.25	\$632,213.38	\$652,572.28	\$617,532.52	\$4,356,834.76
FINANCIAL EXPENSE								
Interest on Bonded Indebtedness.....	454,935.17	463,954.90	469,003.84	471,758.21	477,063.71	449,699.27	449,699.27	3,236,114.37
NET PROFIT, PER CITY'S BOOKS (On Cash Basis).....	\$161,000.11	\$127,494.17	\$142,943.14	\$163,427.04	\$155,149.67	\$202,873.01	\$167,833.25	\$1,120,720.39
Add: Estimated Revenue from Fire Hydrants—Exhibit A.....	61,750.00	62,350.00	63,250.00	64,600.00	65,250.00	65,500.00	65,500.00	448,200.00
NET PROFIT, REPORTED AND NOT REPORTED (On Cash Basis).....	\$222,750.11	\$189,844.17	\$206,193.14	\$228,027.04	\$220,399.67	\$268,373.01	\$233,332.25	\$1,568,920.39

page 442 } I, James L. McLemore, Judge of the Circuit Court of Nansemond County, who presided at the foregoing trial, do hereby certify that the foregoing is a true and correct copy or report of the testimony and other incidents and is all the testimony and other incidents of the trial, in the matter of the application of the City of Norfolk for a correction of erroneous assessments made by the County of Nansemond upon the property of the City of Norfolk, except Exhibits Numbers 1, 3, 4, 5, 6, 7, 8, 9, 10, and it is agreed between the City of Norfolk and the County of Nansemond that in lieu of certifying copies of said exhibits as a part of the record, the originals thereof identified by my certificate shall be separately transmitted by the Clerk of this Court to the Clerk of the Supreme Court of Appeals of Virginia for the use of said Court. And I further certify that the attorney for Nansemond County had reasonable notice, in writing, of the time and place when said report of the testimony and other incidents of the trial would be presented to this Court for verification. I further certify that this certificate of exception was presented and signed by me within sixty days following the final order of the Court.

Given under my hand this the 9th day of November, 1935.

JAMES L. McLEMORE,
Judge of the Circuit Court of the
County of Nansemond.

page 443 } And Afterwards, to-wit: Court's Opinion filed in the Clerk's Office of the Circuit Court of Nansemond County the 8th day of November, 1935.

July 16th, 1935.

Mr. John N. Sebrell, Norfolk, Va.,
Mr. Chas B. Godwin, Jr., Suffolk, Va.

Gentlemen:—

In re: City of Norfolk v. County of Nansemond.

I wish to apologize for the long space of time which has elapsed since this case was argued. My physical condition, as you know, for nearly two months after the hearing was not

favorable, and that, coupled with a voluminous record of complicated facts and figures to be studied, and if possible, digested, is my excuse for withholding till now my conclusions of the questions presented.

We may not agree in its entirety with all that is written in *Newport News v. Warwick County*, 159 Va. 596, but it is the law of Virginia, and the questions settled in that case are founded upon facts so similar to the case now under consideration that an examination of other authorities would serve no useful purpose.

There being no question but that the City derived considerable revenue from the sale of water to those outside of the City limits, it becomes important, indeed the decision of this case turns upon the one question, namely: Has the petitioning city derived a substantial profit from the operation of its water system as a whole?

page 444 } While the auditors for the city and those employed by the County have approached the matters involved from somewhat different angles, it will be found, I believe, that the differences in their results lie chiefly in their difference of treatment of the controverted items of depreciation, and of the costs of water and equipment furnished by the water department to the city for fire protection, sewerage flushing, street cleaning, and for which latter items no charges have been made against the city.

In the *Newport News* case the Court said with reference to the first controverted items: "We do not think the City should be permitted to charge off any estimated amount on account of depreciation, and at the same time be allowed the cost of maintenance and replacements." And that finding of the Court impels me to say that the item carried in the city's Bill of Particulars as "Sinking Fund Annuity" must be considered (subject to inconsequential deductions) as profit.

The other controverted question, namely, is the amount, if any, that should be charged to the City for the equipment, appliances and water necessary to reimburse the water department for the provisions which it has made and must at all times maintain in order to protect the City against the hazard of fire, the flushing of sewers, washing of streets, etc. The cost of this protection has been furnished to the City without charge.

page 445 } If the City was acquiring its water from an independent company, it would unquestionably be charged a sufficient sum to give a fair return for the service rendered, and this in turn would depend, largely upon the amount of investment necessary to provide the service.

To fix the amount that should be charged by the water de-

partment for this service is no easy task. The enquiry leads into highly technical territory, and the court must rely upon those whose qualifications entitle them to speak, for guidance. There is fortunately but little conflict in the testimony on this subject. Mr. Walter H. Taylor, with a broad experience in matters of this character, in a highly intelligent manner, and with a frankness that follows him in all the walks of life, tells us that the costs of providing fire protection reflects back through every item of plant construction. He also says that Col. Maury, who stands preeminent as a consulting engineer, had advised the City years ago, that as much as \$144,000 per year should be charged to the City and credited to the income account of the water department on account of fire protection. To the same effect is the testimony of Mr. Malcolm Pirnie, a consulting engineer of outstanding reputation. Mr. Pirnie's figures place the costs considerably higher, but adopting the lowest method of fixing the costs as testified by him I find \$148,000 per year to be reasonable. This additional amount should be reckoned as profit
page 446 } made by the water department, making the net
income for the year 1927, \$307,882.95, and for
1928, \$275,416.31. It follows that the petition for correction or exoneration from taxes for the years 1928 and 1929 is dismissed.

As to the years 1930, 1931 and 1932, the City is entitled to have the assessments corrected in accordance with Sec. 435 (a), Tax Code of Virginia. And in arriving at the ratio which the revenue derived from sources outside of the city bears to the gross revenue received from all sources, the City will be allowed to include in, and as a part of, the gross revenue, the sum of \$148,000 per year. This will reduce to some extent the per cent of taxes recoverable by the County of Nansemond for the years in question.

The Court has said in the Newport News case that where there are charges for replacement and maintenance, there can be no charge for depreciation or sinking fund allowances, and that if made, they must be treated as profit. As the items of replacement and maintenance will vary with each year, they can only be dealt with as they arise. Suffice it to say that for the years under review they have been *de minimis*.

When we are told that for the years 1927 to 1933 inclusive, the outstanding bonds against the water plant have been reduced from \$9,415,821 to \$8,974,771 against which there has been created out of revenue a sinking fund of \$2,258,754, which in effect reduces the bonded indebtedness to

\$6,716,017; that the book value of the plant has
 page 447 } increased from \$11,545,781 to \$11,900,634; that
 the City has supplied none of the funds for the
 development or operation of the water department; that
 from its own revenues it has paid its own way, and presented
 to the City free fire protection, etc., it must be conceded that
 those charged with the duty of managing this branch of the
 city's activities have shown unusual accumen coupled with
 a high order of financial ability.

Yours very truly,

JAMES L. McLEMORE.

page 448 } And Afterwards, to-wit: Order entered in the
 Circuit Court of Nansemond County on the 8th
 day of November, 1935.

Virginia:

In the Circuit Court of Nansemond County.

In the matter of

Application of the City of Norfolk for Correction and Ex-
 oneration from the payment of Certain Erroneous As-
 sessment of Taxes and Levies for the years 1928 to 1932,
 both inclusive.

ORDER.

This day came the parties, by their attorneys; Chas. B. Godwin, Jr. Attorney for the Commonwealth for Nansemond County, appeared and defended the Application on behalf of said County, and R. C. Norfleet, Commissioner of the Revenue, who made the assessments, was examined as a witness touching the application.

The Court being of opinion from the evidence filed in this case, and for reasons stated in writing & filed in the record and made a part thereof, that the assessed values of the water works properties of the City of Norfolk, situated in Nansemond County are reasonable and fair; that during the years 1927, 1928, 1929, 1930 and 1931, the City of Norfolk derived substantial revenues from sources outside the limits of said City; that the expenses of operating and current maintenance

have been paid out of earnings; that replace-
page 449 } ments amounting to \$12,309.10 for the years 1927
to 1932 inclusive, and all additions and extensions
of mains and pipes have been paid out of capital funds, for
which bonds have been issued and are outstanding; that all
such additions to the water works system and extensions of
mains and pipes were productive of additional revenue added
to the earnings of the properties; that the interest on the
bonded indebtedness of the City incurred for water works
purposes have been regularly paid out of earnings charged
to operating expenses; that no taxes have been paid by the
City of Norfolk on its water works properties; that the resi-
due of the earnings has been paid into the Sinking Fund for
the retirement of the bonds issued for water works pur-
poses; that during the years 1927, 1928, 1929, 1930 and 1931,
the City of Norfolk made substantial profit and net revenue
from the operation of its entire water works properties
within the meaning of Section 183 of the Constitution of Vir-
ginia; that those portions of said water works properties
situated in Nansemond County contributed to the said sub-
stantial profit and revenue, and that said properties situated
in Nansemond County are liable for taxation by said County
for the years 1928, 1929, 1930, 1931 and 1932.

The Court being further of opinion that the City of Nor-
folk earned enough from the sale of water to consumers in-
side and outside of the limits of the said City and other
sources to furnish itself the service of the fire protection,
sewer flushing and street cleaning, without charge,
page 450 } that a reasonable charge for these services dur-
ing the years 1927, 1928, 1929, 1930 and 1931, is
the sum of \$148,000.00 per year; that said amount should
be regarded as a part of the gross receipts of the utility
for each of the aforesaid years, and that the City of Nor-
folk should not be permitted to charge off any amount on
account of depreciation.

The Court being further of opinion that during the years
1929, 1930 and 1931, the gross revenues of the City of Norfolk
from all sources, exclusive of fire protection services, was as
follows: 1929 the sum of \$859,053.06; 1930 the sum of \$876,-
121.94; 1931 the sum of \$876,763.99; that in addition to the
above revenues the City of Norfolk should include as a part
of the gross revenues derived from the operation of the
whole utility the sum of \$148,000.00 for each of the years
1929, 1930 and 1931; that during the years 1929, 1930, 1931,
the gross revenues of said utility derived from consumers
outside the City limits of said City were as follows: 1929
the sum of \$69,168.76; 1930 the sum of \$77,641.28; 1931 the

sum of \$79,063.86; that the proportion of the revenues derived from the consumers outside of the limits of the City of Norfolk bears to the gross revenues derived from the whole utility are as follows: 6.86 per cent for the year 1929; 7.58 per cent for the year 1930; and 7.71 per cent for the year 1931.

On consideration whereof, it is ordered that the assessments of said properties, as made by the Commissioner of the Revenue, for the years 1928 and 1929 be affirmed, and relief denied; that the assessments of said properties for the years 1930, 1931 and 1932 be corrected; that the assessment for 1930 be reduced so that said assessment shall be 6.86 per cent for the assessment as made by the Commissioner of the Revenue for that year; that the assessment for 1931 be reduced to 7.58 per cent of the assessment as made by the Commissioner of the Revenue for said year, and that the assessment for 1932 be reduced to 7.71 per cent of the assessment as made by the Commissioner of the Revenue for said year, and the City is hereby exonerated from the payment of any tax on such amount as has been erroneously assessed for said years.

The City of Norfolk duly excepted to this judgment on the ground that the same is contrary to the law and the evidence; that the evidence shows that the lands and buildings assessed have not been the source of revenue or profit for the year preceding those for which the assessments were made; that in determining the question of revenue or profit the Court should have allowed a deduction for depreciation and should not have allowed as profit fire protection service, which was an intangible benefit but not revenue or profit; and that said property belonged to the City of Norfolk and was exempt from taxation under Section 183 of the Constitution of Virginia.

And Nansemond County excepted to the Court page 452 } excluding from revenues derived from sources outside the City of Norfolk during the years 1929, 1930 and 1931, the sum of \$12,000.00 received from Virginia Beach, and all sums received from the lease of land, fishing permits and privileges, Federal reservation, public carriers and other miscellaneous items shown on Exhibit B, of Audit of W. P. Jordan; and the refusal of the Court to increase the assessments made on the pipe line of said City in the County of Nansemond.

And the City having expressed an intention to apply to the Supreme Court of Appeals of Virginia for a writ of error to this judgment, it is ordered that this judgment be suspended for a period of ninety days from the date hereof.

page 453 } And Afterwards, to-wit: Notice filed in the
Clerk's Office of the Circuit Court of Nansemond
County on the 8th day of November, 1935.

To Charles B. Godwin,
Attorney for Nansemond County:

Please Take Notice, That on Saturday, November 9, 1935,
at ten o'clock A. M., the City of Norfolk will tender and
present to the Judge of the Circuit Court of Nansemond
County, Certificate of Bills of Exceptions in the case of City
of Norfolk v. Board of Supervisors of Nansemond County,
in the matter of the application of the City for correction
of erroneous assessments of its property by Nansemond
County.

Dated this 7th day of November, 1935.

CITY OF NORFOLK,
By JNO. N. SEBRELL,
City Attorney.

Service accepted this 7th day of November, 1935.

CHAS. B. GODWIN, JR.,
Attorney for Nansemond County.

page 454 } And Afterwards, to-wit: Notice of Application
to the Clerk of the Court for a Transcript of the
Record in this case filed in the Clerk's Office of the Circuit
Court of Nansemond County on the 8th day of November,
1935.

To the Board of Supervisors of Nansemond County:

You are hereby notified, that on Saturday, November 9th,
1935, at eleven o'clock A. M., I shall apply to the Clerk
of the Circuit Court of Nansemond County, at the office of
such Clerk, for a transcript of the record in the case of
the City of Norfolk v. Board of Supervisors of Nansemond
County, the same being an application of the City of Nor-
folk for correction of erroneous assessments of the property
of the City located in said County, as made by the County

Supreme Court of Appeals of Virginia.

of Nansemond for the years 1928, 1929, 1930, 1931 and 1932, for the purpose of applying to the Supreme Court of Appeals of this State or a writ of error and *supersedeas*.

Dated this 7th day of November, 1935.

CITY OF NORFOLK,

By JNO. N. SEBRELL,

City Attorney.

Service accepted this 7th day of November, 1935.

CHAS. B. GODWIN, JR.,

Attorney for Nansemond County.

page 455 } And Afterwards, to-wit: Stipulation filed in
the Clerk's Office of the Circuit Court of Nanse-
mond County the 9th day of November, 1935.

Virginia:

In the Circuit Court of Nansemond County.

In the matter of

Application of the City of Norfolk for Correction and Ex-
oneration from the Payment of Certain Erroneous As-
sessments of Taxes and Levies for the years 1928 to
1932, both inclusive.

STIPULATION.

It is hereby stipulated by and between the Commonwealth's Attorney for Nansemond County and the City Attorney for the City of Norfolk that the Clerk of the Circuit Court of the County of Nansemond will transmit the original exhibits in this cause to the Clerk of the Supreme Court of Appeals of Virginia, at Richmond, Virginia, for use in connection with an appeal in said cause and shall not copy them in the record applied for, for the purpose of appeal. For the purpose of identification of said exhibits, the Judge of the Circuit Court of the County of Nansemond, Virginia, does by his signature hereto certify that the exhibits marked Exhibit 1, 3, 4, 5, 6, 7, 8, 9, 10, and duly attested by the signature of the aforesaid Judge, are the original exhibits and all of said exhibits filed in the above styled cause.

Witness our hands this the 9th day of November, 1935.

CHAS. B. GODWIN, JR.,
Commonwealth's Attorney for Nansemond County.
JNO. N. SEBRELL,
City Attorney for Norfolk City.
JAMES. L. McLEMORE,
Judge of the Circuit Court of the County of
Nansemond, Virginia.

page 457 } And Afterwards, to-wit: Order entered in the
Circuit Court of Nansemond County on the 9th
day of November, 1935.

Virginia:

In the Circuit Court of Nansemond County.

City of Norfolk

v.

Board of Supervisors of Nansemond County.

ORDER.

This day came again the parties, by their attorneys, and the City of Norfolk, within due and proper time, after giving reasonable notice in writing of the time and place thereof, to the attorney for Nansemond County, as required by law, tendered and filed a true and correct copy of report of the testimony and other incidents of the trial of this case, and said copy or report is duly received, signed, authenticated and verified by the Court and ordered to be made a part of the record in this case, and the exhibits marked numbers 1, 3, 4, 5, 6, 7, 8, 9, 10, now in the possession of the Clerk of this Court, are hereby made a part of the record in this case, and, as agreed in writing between the parties to this suit, which agreement is also made a part of this record, the Clerk of this Court is hereby directed to certify the originals thereof to the Supreme Court of Appeals of Virginia as a part of the transcript of the record in this case.

page 458 }

CLERK'S CERTIFICATE.

I, John H. Powell, Clerk of the Circuit Court of Nansemond County, Virginia, do certify that the foregoing is a true transcript of the records in the case of Application of the City of Norfolk for Correction and Exoneration from the Payment of Certain Erroneous Assessments of Taxes and Levies for the Years 1928 to 1932, both Inclusive, lately pending in said Court.

I further certify that the same was not made up and completed and delivered until the County of Nansemond had received reasonable notice thereof, and of the intention of the City of Norfolk to apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the judgment therein.

JOHN H. POWELL,
Clerk Circuit Court of Nansemond County, Virginia.

A Copy—Teste:

M. B. WATTS, C. C.

INDEX

	Page
Petition for Writ of Error.	1
Record.	36
Application for Correction, &c., Assessments, Taxes, &c..	36
Bill of Particulars.	43
Exhibit A, Water Rates Charged &c.	44
Exhibit B, Statement of Operation, Bureau of Water....	47
Grounds of Defense.	49
Testimony.	51
A. P. Breeden.	52
W. P. Hilton.	86
W. R. L. Taylor.	115
Walter H. Taylor.	121, 170, 205, 243
John N. Chester.	162
R. C. Norfleet.	171, 195
Herbert C. January.	172
T. R. Pettit.	192
W. P. Jordan.	215
Malcolm Pirnie.	250
Charles H. Bliven.	272
Fred F. Ames.	277
Contract Portsmouth, Berkley & Suffolk Water Co. and	
City of Norfolk, October 1, 1917.	280
Exhibit W. P. Jordan No. 1, A.	285
Exhibit W. P. Jordan No. 1, B.	288
Exhibit W. P. Jordan No. 1, C.	289
Exhibit W. P. Jordan No. 1, D.	290
Judge's Certificate.	291
Opinion.	291
Order, November 8, 1935—Complained of.	294
Notice of Application for Transcript.	297
Stipulation and Order as to Exhibits.	298, 299
Clerk's Certificate.	300